Dear Board,
Please pull consent item 4.6. This involves public money to pay for election costs and deserves public discussion.
Becky STeinbruner
Dear Soquel Creek Water District Board,

I would like to urge you not to approve the Draft Minutes of the May 5, 2020 Board meeting until the video recording of that meeting is posted on the District website. There is no way to verify that the Draft Minutes are correct, and as such, there is no information available to the public regarding the actual discussions or the content of any public comment on items.

In the interest of government transparency, please postpone approving the Draft Minutes for May 5, 2020 until the video is made public on the District website.

Thank you.

Sincerely,

Becky Steinbruner
Dear Ms. Steinbruner,

On behalf of the Soquel Creek Water District Board of Directors, thank you for your email.

We appreciate you recognizing the District’s Community Water Plan (CWP). The 14-month community oriented and science-based process to develop the CWP lead us to pursue a diversified water supply portfolio. Although the CWP process and the data lead us to recognize that the approach to use purified recycled water to recharge the critically overdrafted groundwater basin is the best option and aligns with our community values (i.e. environmentally oriented, drought resilient, scalable, financially smart, produces high-quality water, etc.); the idea of a diversified water supply portfolio is still valued. Thus, we continue to invest in and evaluate, not only in water transfers, but also stormwater recharge.

Although the data and modeling from the City of Santa Cruz Water Department shows there is insufficient water available in the north coast creeks and San Lorenzo River for the transfer/sale of such water to solve the critical overdraft issue, we are committed to the continued exploration of this potential water source to help diversify our portfolio. We understand that the amount of water available from the north coast creeks is limited by various factors, including but not limited to, environmental concerns, rainfall, physical issues, etc. We also know that the City still needs to obtain the appropriate water rights before it can sale or transfer San Lorenzo River water to the District.

As we wrap up the water transfer pilot project this year and analyze the results, we will continue working with our Santa Cruz City partners to further evaluate the potential for a longer-term agreement. As you know, the City is in the midst of a rate study with Raftelis Consultants that should be completed this fall, and at that time we should have a better sense of the proposed price for transferred water, which will help facilitate the discussion for a potential future water transfer/purchase.

Sincerely,

Ron Duncan
| General Manager |
Soquel Creek Water District | 5180 Soquel Dr., Soquel CA 95073 | www.soquelcreekwater.org
| direct 831-475-8501 x144 | main 831-475-8500

Please consider the environment before printing this e-mail.

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From: Becky Steinbruner <ki6tkb@yahoo.com>
Sent: Saturday, May 16, 2020 9:18 PM
To: bod <bod@soquelcreekwater.org>; Emma Olin <emmao@soquelcreekwater.org>
Cc: Becky Steinbruner <ki6tkb@yahoo.com>
Subject: Fw: Sunset Farms, Inc. and Rodoni Company vs City of Santa Cruz (North Coast Water Rates)

Dear Soquel Creek Water District Board,
I am re-sending the message below, with the two attached documents that were missing.

My apologies.
Sincerely,
Becky Steinbruner

From: Becky Steinbruner <ki6tkb@yahoo.com>
Sent: Saturday, May 16, 2020 9:18 PM
To: bod <bod@soquelcreekwater.org>; Emma Olin <emmao@soquelcreekwater.org>
Cc: Becky Steinbruner <ki6tkb@yahoo.com>
Subject: Fw: Sunset Farms, Inc. and Rodoni Company vs City of Santa Cruz (North Coast Water Rates)

Dear Soquel Creek Water District Board,
I am re-sending the message below, with the two attached documents that were missing.

My apologies.
Sincerely,
Becky Steinbruner

I was recently able to obtain a copy of the law suit filed by farmers on the North Coast against the City of Santa Cruz regarding water pricing and Soquel Creek Water District. That is Case #19CV01725 in Santa Cruz County Superior Court. The First Amended Petition for Writ of Mandate filed by the farmers and the Demurrer filed by City of Santa Cruz are attached below.
As I understand it, the main argument that the North Coast farmers make is that they feel their water rates got raised to cover the cost of treating potable water, but the water they buy for irrigation is untreated and is gravity-fed, so they should not have to pay so much. The farmers also make a complaint that the City of Santa Cruz is selling water more cheaply to Soquel Creek Water District and the County of Santa Cruz.

Soquel Creek Water District Board Chairman Bruce Daniels has many times referred to this lawsuit as the reason why the District cannot expect to continue to receive the current $325/AF price for the Surface Water Transfer Pilot Project. According to the City's Demurrer, it is evident that this argument is without any legal merit.

The City points out on page 16 of the Demurrer that under the Constitution, they can sell the water for whatever price they want, as long as it is not higher than the cost of producing the water. This is according to the California Constitution Article XIIIIC(1)(e)(1) and (e)(2), and Article XIIIID (6)(b)(1) & (b)(3), which governs Prop. 218.

The terms of the COOPERATIVE WATER TRANSFER AND PURCHASE AGREEMENT AND RESOURCE MANAGEMENT PILOT PROJECT BETWEEN CITY OF SANTA CRUZ AND SOQUEL CREEK WATER DISTRICT of August 26, 2015 are as follows (page 58 in the "Notice of Intent to Adopt a Negative Declaration") :

3. PRICE

"The CITY agrees to sell to the DISTRICT treated water delivered to the CITY-DISTRICT interties located on the DISTRICT's O'Neil Ranch well site and at Jade Street and Bain Street under the terms and conditions described hereof at a price that is equal to: x the Santa Cruz Water Department's FY 2013 actual average annual cost of producing water plus x the Soquel Creek Water District's FY 2013 actual average annual avoided cost of production for a total of (insert figure) per million gallons, or a pro rata amount thereof based on actual volume provided. The CITY shall bill the DISTRICT on a monthly basis for water delivered to the DISTRICT based on the meter installed at the above specified intertie connections between the CITY and the DISTRICT." *

Significant Effects on the Environment: None. (page one)

Therefore, Soquel Creek Water District does have the legal ability to negotiate feasible water pricing agreements with the City for an adjusted water price for conjunctive use. The District could arguably state that conjunctive use agreements would foster higher groundwater levels for the City's Beltz Wells in dry years, and therefore merit consideration in price negotiation.

I hope that the Soquel Creek Water District Board will direct staff to begin negotiations now to extend the Surface Water Transfer Pilot Project terms with the City of Santa Cruz in advance of the Agreement's expiration date of December 31, 2020. Doing so would clearly support your Community Water Plan.

Please respond in writing. Thank you.
Sincerely,
Becky Steinbruner

Subject: Sunset Farms, Inc. and Rodoni Company vs City of Santa Cruz (North Coast Water Rates)
ITEM 5.0 - ORAL AND WRITTEN COMMUNICATIONS

Exempt from Filing Fees
Government Code § 6103

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
9/20/2019 1:46 PM
Alex Calvo, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

CASE NO. 19CV01725
Unlimited Jurisdiction

(Case assigned to Hon. Paul P. Burdick)

DEFENDANT CITY OF SANTA CRUZ’S
DEMURRER TO FIRST AMENDED
COMPLAINT: MEMORANDUM;
DECLARATION OF RYAN THOMAS
DUNN IN SUPPORT

Complaint Filed: June 11, 2019
Hearing Date: March 3, 2020
Time: 8:30 a.m.
Dept.: 5

Trial Date: None set

DEFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 3, 2020 at 8:30 a.m. or as soon thereafter as
counsel may be heard in Department 5 of the above-mentioned Court, located at 701 Ocean Street,
Santa Cruz, California, 95060. Defendant City of Santa Cruz (the “City”) will and hereby does
demur to Plaintiffs Sunset Farms, Inc.’s and M. Rodoni & Company’s, also known as Mario Rodoni
(together, “Farmers”) First Amended Complaint (“FAC”).

The City generally demurs to the entire FAC, and each of its two causes of action, pursuant to
Code of Civil Procedure section 450.10, subdivision (c), on the ground they do not, and each of them
does not, state facts sufficient to constitute a cause of action because:

- The City does not “impose” the water rates the Farmers challenge and thus the Farmers
cannot state a cause of action under Propositions 218 or 26 (Cal. Const., arts. XIII C &
  XIII D).

- The Farmers do not have standing to challenge water rates they do not pay, including
  those the City charges public entities.

The demurrer is based on this Notice, the attached Demurrer, the attached Memorandum, the
attached Declaration of Ryan Thomas Dunn, the Declaration of Toby Goddard accompanying this
demurrer, the Request for Judicial Notice and Declaration of Ryan Thomas Dunn accompanying this
demurrer, the Motion to Strike accompanying this demurrer, the records and files of this action, and
such arguments and evidence as the City may present at or before the hearing.

DATED: September 20, 2019

ATCHISON, BARISONE & CONDOTTI

ANTHONY P. CONDOTTI, City Attorney

COLANTUONO, HIGHSMITH & WHITNEY, PC

MICHAEL G. COLANTUONO
RYAN THOMAS DUNN
CONOR W. HARKINS

Attorneys for Defendant

CITY OF SANTA CRUZ

DEFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT
ITEM 5.0 - ORAL AND WRITTEN COMMUNICATIONS

DEMMURER

Defendant City of Santa Cruz demurs to the First Amended Complaint, and each of its two causes of action, on the following grounds:

DEMURRER TO FIRST AMENDED COMPLAINT

1. The First Amended Complaint and each cause of action fail to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

DEMURRER TO FIRST CAUSE OF ACTION

2. The first cause of action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

DEMURRER TO SECOND CAUSE OF ACTION

3. The second cause of action fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

DATED: September 20, 2019

ATCHISON, BARISONE & CONDOTTI

ANTHONY P. CONDOTTI, City Attorney

COLANTUONO, HIGHSWTH & WHATLEY, PC

MICHAEL G. COLANTUONO
RYAN THOMAS DUNN
CONOR W. HARKINS

Attorneys for Defendant

CITY OF SANTA CRUZ

DEFFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT
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Article XIII C

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DEFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT
I. INTRODUCTION

Plaintiffs Sunset Farms, Inc. and M. Redoni & Company (together, "Farmers") claim Defendant City of Santa Cruz ("City") charges them too much for untreated agricultural water the City provides when they choose not to pump groundwater or take other supplies. The Farmers claim the City’s 2016 increase in its rates for this untreated agricultural water violate Propositions 218 and 26 (Cal. Const., arts. XII C & XII D), which require the City to charge utility customers no more than its costs to provide that utility.¹

But even were the Farmers’ allegations regarding the City’s water rates correct — they are not — Propositions 218 and 26 apply only to levies public entities “impose,” not those paid voluntarily by customers, like the Farmers, who have other water sources. The Farmers reduce or eliminate their demand for City supplies when advantageous to do so and the Court should take judicial notice they have alternatives to City water — wells and ponds. Accordingly, the City does not “impose” water rates on them, and neither Proposition 218 nor 26 applies. If the Farmers do not like Santa Cruz’s price for supplemental agricultural water, they need not pay it; they may look elsewhere.

The Farmers also allege — again, incorrectly — that the City charges them an increased rate so it can charge others less. Accordingly, they seek to void the rates other customers pay. But the Farmers have standing to challenge only rates they pay, not those others do. Moreover, Propositions 218 and 26 set a ceiling on rates, not a floor. That the City allegedly under-collects from one user class does not mean it over-collects from another. The City might subsidize certain customer rates with non-rate revenue, as the Supreme Court recently confirmed our Constitution permits.

¹ Proposition 218 does not control here, but some authorities under it apply by analogy because Propositions 26 and 218 are in pari materia and use similar language. The case is governed by Proposition 26 under the language of the two measures and the Supreme Court’s recent decision in City of San Buenaventura v. United Water Conservation Dist. (2017) 3 Cal.5th 1191 (augmentation charge on those who pump groundwater governed by Prop. 26, not Prop. 218, because related to voluntary economic use of water, not property ownership). The parties’ disagreement on this point of law is not material to this Demurrer or the accompanying Motion to Strike, however, as the result is the same under either Proposition 218 or 26.
Thus, both because there is no Proposition 218 or 26 violation in rates for agricultural water the City does not “impose” on the Farmers, and because they lack standing to challenge the rates the City charges others, the Court should sustain the City’s demurrer. Because no amendment can fix these flaws in their pleading without retracting their current allegations — which the sham pleading rule forbids — no leave to amend need be granted.

II. STATEMENT OF FACTS

A. SANTA CRUZ’S WATER UTILITY

The City serves water to customers inside and outside its boundaries and has different rates for different customer classes because each imposes different demands on its water utility. (FAC, ¶¶ 5-6; 8, Request for Judicial Notice (“RJN”), Exh. A at pp. RJN011–RJN012, Exh. B at pp. RJN052–RJN056; Griffith v. Pajaro Valley Water Management Agency (2014) 220 Cal.App.4th 586, 601 [Prop. 218 permits water rates to be set by customer class], disapproved on another ground by City of San Buenaventura v. United Water Conservation Dist. (2017) 3 Cal.5th 1191, 1207, fn. 5 (Ventura).] The City’s water rates include a flat fee component known as a “ready to serve” charge and volumetric charges. (RJN, Exh. A at pp. RJN011–RJN012.) The former reflects the costs the City incurs to be prepared to supply water on demand, whenever it might be demanded. (RJN, Exh. B at pp. RJN030–RJN031.)

As is typical for urban suppliers, the City’s rates are also distinguished by water use (residential, commercial, landscape/irrigation) and by volumetric tiers (i.e., discrete volumes of water used). (RJN, Exh. A at pp. RJN011–RJN012.) The City also established distinct rates for two customer classes with unique service costs — UC-Santa Cruz and North Coast farmers — including the plaintiff Farmers here. (Id. at pp. RJN011 [“UCSC”], RJN012 [“North Coast AG”].) The City’s 2016 rate change was supported by a cost of service report of the City’s independent rate-making expert to detail the costs necessary to provide each of the City’s services. (RJN, Exh. A at p. RJN009 [“an analysis of water rates and ready-to-serve charges”]; Exh. B [rate study].)
The Farmers each rely for irrigation water on wells and — in Sunset Farms’ case — ponds on their land. (RJN, Items E, F; Declaration of Toby Goddard (“Goddard Decl.”), Exh. I at p. TG033.) They pay the City’s “North Coast Ag” rates for supplemental water and take (and pay for) only the volume they wish, when they wish. Records suggest they use City irrigation water resources only when alternatives are expensive, as in drought. (RJN, Items E, F; Goddard Decl., Exh. H at p. TG005.) Thus, the City bears costs to be constantly ready to serve the Farmers and others who pay the North Coast Ag rates, but these users do not provide predictable revenue to a utility with predictable costs of service and an obligation to maintain readiness to serve. An insurer who receives no claims incurs costs nonetheless.

The chart below shows the Farmers increased their demand on the City’s water system during California’s historic drought of 2014 – 2017, but they have greatly reduced it now that other, cheaper sources of water are again available. They take water from Santa Cruz if and when they wish and not otherwise and plainly have other sources, such as groundwater. (RJN, Items E, F.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Sunset Farms “North Coast Ag” Usage (ccf)</th>
<th>Rodoni “North Coast Ag” Usage (ccf)</th>
<th>Total Farmers “North Coast Ag” Water Usage (ccf)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>453</td>
<td>1,089</td>
<td>1,542</td>
</tr>
<tr>
<td>2014</td>
<td>8,639</td>
<td>5,726</td>
<td>14,365</td>
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<tr>
<td>2015</td>
<td>28,028</td>
<td>2,942</td>
<td>30,970</td>
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<tr>
<td>2016</td>
<td>18,896</td>
<td>1,002</td>
<td>20,898</td>
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<tr>
<td>2017</td>
<td>2,316</td>
<td>3,197</td>
<td>5,513</td>
</tr>
<tr>
<td>2018</td>
<td>448</td>
<td>1,458</td>
<td>1,906</td>
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(Ibid.; Goddard Decl., Exh. H at p. TG005.)

The Farmers are not to be faulted for running their businesses rationally, but their opportunistic use of City water has implications for what it costs Santa Cruz to serve them. Plaintiff

2 As further explained in the City’s Request for Judicial Notice, the City seeks judicial notice of the fact the Farmers can take irrigation water from sources other than the City — it has no monopoly position as to them as it does to users of domestic water within the City.

1 “Ccf” means 100 cubic feet of water — a typical billing unit for water utilities, including the City’s. A ccf is approximately 748 gallons. (Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano (2015) 255 Cal.App.4th 1495, 1499, fn. 7.)
Rodomi has opened and closed two agricultural water accounts since 2014, proving it can obtain water from other sources when economically advantageous and signaling the City offered it the best deal in 2014 through 2016, when those accounts were open. (Goddard Decl., Exh. II at p. TG005.)

B. THE FARMERS CHALLENGE WATER RATES THEY DO NOT PAY

The City set the “North Coast Ag” rates the Farmers challenge in August 2016. (FAC, ¶ 7; RJN, Exh. A.) The Farmers paid those rates for over two years before filing their claim under the Government Claims Act challenging those rates in March 2019, which the City rejected. (FAC, ¶ 18; RJN, Exh. C at pp. RJN162–RJN167.) The Farmers then filed this suit.

The Farmers allege they challenge only those rates for “untreated, gravity-fed water for agricultural purposes” outside the City (FAC, ¶ 5) and that they pay the North Coast rates (id. at ¶ 18; RJN, Exh. C, Exh. D at p. RJN179, line 10). They allege the City has not adequately justified the increased North Coast Ag rates it adopted in 2016. (FAC, ¶¶ 11–12, 14.) They have standing to pursue invalid rates they pay, but not to challenge rates they do not.

The parties met and conferred on the City’s critique of the Complaint’s allegations, which led to the First Amended Complaint (“FAC”). (Declaration of Ryan Thomas Dunn (“Dunn Decl.”), ¶ 3; see RJN, Exh. D.) The FAC retains some of the deficiencies the City identified from the initial Complaint, as the City informed the Farmers’ counsel. (Dunn Decl., ¶ 4.) The City therefore demurs and separately moves to strike on the same grounds if the Court determines that the Farmers lack standing to challenge rates they do not pay but the FAC otherwise survives demurrer.

III. ARGUMENT

A. STANDARDS ON DEMURRER

The standards on demurrer are familiar and briefly stated: A defendant may demur to a complaint or cause of action that fails to allege facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) A demurrer tests the legal sufficiency of a complaint, accepting as true all facts properly pled or subject to judicial notice. (Writers Guild of Am., Inc. v. City of Los Angeles (2000) 77 Cal.App.4th 475, 477.) However, a court need not “assume the truth of contentions, deductions, or conclusions of fact or law.” (Ellenberger v. Espinosa (1994) 30

DEPUTY CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT

**B. The Farmers State No Proposition 218 or 26 Claim Because the City Does Not “Impose” Rates on Them**

In 1996, voters adopted Proposition 218 to establish substantive and procedural restrictions on taxes, assessments, and property-related fees levied by local governments. (Ventura, supra, 3 Cal.5th at p. 1200, citing Cal. Const., art. XIII D, § 3, subd. (a).) Proposition 218 requires the amount of a “fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.” (Ibid., quoting Cal. Const., art. XIII D, § 6, subd. (b)(3).) Voters extended Proposition 218’s requirements in 2010, enacting Proposition 26 to redefine the “taxes” that require voter approval under the earlier measure to include “any levy, charge, or exaction of any kind imposed by a local government” except those in seven enumerated and two implied exceptions. (Ibid., quoting Cal. Const., art. XIII C, § 1, subd. (c).)4

Thus, Propositions 218 and 26 govern only levies governments “impose.” (Cal. Const., art. XIII C, § 1 [defining “tax” as levy, charge, or exaction “imposed” by local government] (emphasis added), and stating exceptions, including assessments and property-related fees imposed by article XIII D]; id. at art. XIII D, § 1 [applying Prop. 218 to “assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority,” emphasis added]; id. at art. XIII D, § 6, subd. (a) [governing property related fees a local government “imposes”]; see San Diego County Water Authority v. Metropolitan Water Dist. of Southern California (2017) 12 Cal.App.5th 1124, 1152 [noting, but not deciding, defendant’s claim it did not “impose” rates challenged there].)

Because they have other sources of agricultural irrigation water (RIN, Items E, F), the Farmers pay the rates they challenge voluntarily — the City uses neither force nor authority to

---

4 Proposition 26 has parallel provisions governing state revenue measures, but those are not in issue here. (Cal. Const., art XIII A, § 3.)
compel them to do so. (Cf. *City of Madera v. Black* (1919) 181 Cal. 306, 214–215 [sewer rates are not "imposed" because compulsory and adopted without payers' consent].) The City has no authority over the Farmers — they are outside the City and its monopoly service area (FAC, § 5) and the City does not "force" them to take its untreated agricultural water, not even as a non-government monopoly provider might. The Farmers have their own sources of irrigation water and admittedly use the City's only when their wells are not as "productive" as they wish. (RJN, Items E, F; Goddard Decl., Exh. I at pp. TG031 [Rodoni uses City water when groundwater wells are "less productive."], TG033.)

Levies paid voluntarily, like Santa Cruz's rates for water the Farmers can take or leave, are not "imposed." "The phrase "to impose" is generally defined to mean to establish or apply by authority or force, as in "to impose tax." (Webster's Third New International Dictionary (1970) p. 1136.)" (Ponderosa Homes, Inc. v. *City of San Ramon* (1994) 23 Cal.App.4th 1761, 1770 [construing Mitigation Fee Act, cited favorably in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 944 (construing Prop. 218).] "The word "impose" usually refers to the first enactment of a tax, as distinct from an extension through operation of a process such as annexation." *(Citizens Ass'n of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182, 1194 [construing Prop. 218].) ""[i]mpose" "suggests an origination of a burden." (Id. at p. 1194, fn. 15.)

Thus, if a levy is not "imposed," but instead only offered as a commodity a property owner may — or may not — take, there can be no Proposition 218 or 26 violation. (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 427 [fee for new water connection not "imposed" under Prop. 218 because new connection "results from the owner's voluntary decision to apply for the connection," emphasis added].) The City offers a service the Farmers may take or leave, and because they do not "impose" service rates, Propositions 218 and 26 do not limit what they may charge — market forces do; farmers can and do take their business elsewhere when they see fit. (Cf. *City of Oakland v. Burns* (1956) 46 Cal.2d 401, 407 ["When a governmental entity is authorized to exercise a power purely proprietary, the law leaves to the theory that it has full power to perform it in the same manner as a private person."].)
The FAC and judicially noticeable facts show the Farmers have other water sources and need
not take the City’s irrigation water, or may reduce their consumption, when they have cheaper
alternatives or their own on-site sources are sufficient. This further evidences the City does not
“impose” fees on them. The City’s rate study shows North Coast Ag customers place only seasonal
demand on the City’s water system and only as “supplemental water to their well water.” (RJN,
Exh. B at p. RJN042.) The Farmers each have multiple wells on their property; Sunset Farms sought
to replace one in 2015, presumably to shore up their non-City water supplies. (RJN, Items E, F;
Dunn Decl., Exhs. E, F, G at pp. RJN182, RJN199; Goddard Decl., Exh. 1 at pp. TG031, TG033.)

The Farmers also cite Propositions 13 and 62 in paragraphs 21, 25, and 29 of the FAC, but do
not discuss these authorities or allege the challenged rates violate them. Moreover, those measures
offer no haven to the Farmers here. Proposition 13 allows very flexible pricing of water service,
allowing rates above cost of service. (Hansen v. City of San Buenaventura (1986) 42 Cal.3d 1172
[upholding rate on outside-City customers that included return on City’s investment in water
utility.] As the City does not impose water rates on Farmers, they cannot easily allege the City’s
water rates are compulsory and so unreasonable as to be taxes under Proposition 13. Proposition 62,
a statutory initiative from 1986, does not apply to charter cities like Santa Cruz. (Traders Sports,
Inc. v. City of San Leandro (2001) 93 Cal.App.4th 37, 48–49 & fn. 3; Burbank–Glendale–Pasadena
Airport Authority v. City of Burbank (1998) 64 Cal.App.4th 1217, 1226–1227) and also applies only
to local taxes, not fees for “property related services,” a class of revenue measures newly defined
and regulated by 1996’s Proposition 218 (Santa Clara County Local Transportation Authority v.

C. THE FARMERS LACK STANDING TO CHALLENGE RATES THEY DO NOT PAY

Plaintiffs must allege a direct, substantial interest in the subject of litigation to have standing
to sue in mandate. “[O]ne may obtain the writ only if the person has some special interest to be
served or some particular right to be preserved or protected over and above the interest held in

5 This section of the memorandum is substantively identical to section III.B. of the memorandum
supporting the City’s motion to strike portions of the FAC.
common with the public at large.” (Save the Plastic Bag Coalition v. City of Manhattan Beach
(2011) 52 Cal.4th 155, 165.)

The Farmers have no standing to challenge rates others pay — they may challenge only rates
they pay — rates for non-potable water delivered outside the City. (FAC, ¶ 5 [Farmers get “gravity-
fed and untreated” water and are “located outside the City limits”].) Judicially noticeable evidence
shows the Farmers pay and challenge the North Coast Ag rates. (RNJ, Exh. A; Exh. C at
pp. RNJ162–RNJ167; Exh. D at p. RNJ179, line 10.) Courts may take judicial notice of factual
allegations and facts that reasonably can be inferred from those expressly pleaded (Fremont
Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 111) and thus may take judicial
notice of these documents that support the Farmers’ allegations and show the rates they pay.

Though they pay only North Coast Ag rates, the Farmers seek a writ prohibiting the City
from “selling water to governmental entities and others at a discount.” (FAC, ¶ 22.) Thus, they ask
this Court to restrain legislative discretion conferred on the Santa Cruz City Council by the City
Charter and article XI, section 5 of the State Constitution, which confers wide home-rule authority
on charter cities like Santa Cruz. Because nothing in Propositions 218 or 26 forbids the City to sell
water at below cost, no such writ may issue. (E.g., Morgan v. Imperial Irrigation Dist. (2014) 223
Cal.App.4th 892, 922–923 ["We find nothing in [Cal. Const., art. XIII D.] section 6 that prohibits an
agency from charging less than the proportional cost of service. The fees simply cannot exceed the
proportional cost."].) The Farmers allege the City charges them an increased rate “so that the City
can provide water to governmental entities and others at a discount.” (Id. at ¶ 24.) But the Farmers
do not allege they pay the discounted rates nor that they are governmental entities paying those rates,
and thus they have no standing to challenge the rates other customers pay. The Farmers’ claim their
own rates are too high is a different claim — and beyond the reach of this motion to strike.

Courts find no standing in cases seeking similar relief because plaintiffs lacked a sufficient
beneficial interest in the economic affairs of others. For example, Sacramento County Fire
Protection Dist. v. Sacramento County Assessment Appeals Bd. II (1999) 75 Cal.App.4th 327, 333,
held a fire district lacked standing to challenge the assessed valuation of others’ property. The
plaintiff district in Embarcadero Municipal Improvement Dist. v. County of Santa Barbara (2001) 88
Cal.App.4th 781, 787, lacked standing to challenge the allocation of property tax paid as to property
it did not serve. Indeed, one who seeks writ relief must have a beneficial interest in the writ and, in
the context of public revenue measures, must pay the challenged levy to have standing to challenge
County etc. Authority (1996) 49 Cal.App.4th 1761, 1773.) The Farmers admit they do not pay rates
they charge as too low, and therefore they cannot sue to invalidate them.

Even if they did have standing to challenge the rates others pay, nothing in Propositions 218
or 26 requires the City to charge any customer the full cost of service. The City may subsidize some
rates and not others — provided no customer pays more than the cost to serve him or her. (Cal.
Const., art. XIII C, § 1, subds. (e)(1) & (e)(2) [levy not a tax requiring voter approval under Prop. 26
if it “does not exceed the reasonable costs to the local government,” emphasis added]; id. at
art. XIII D, § 6, subds. (b)(1) & (b)(3) [Prop. 218 prohibits revenues derived from fees for property
related services to “exceed … the funds required to provide” the service nor “the proportional cost of
Cal.App.5th 1204, 1222 [applying Prop. 26] (NCWA v. SWRCB); Morgan v. Imperial Irrigation Dist.
on rates, not a floor. They were intended to protect tax- and rate-payers, not to ensure government
exacts all it might from them.

Thus, that some rates are allegedly below the costs of service does not mean others are too
high. (NCWA v. SWRCB, supra. 20 Cal.App.5th at p. 1222 [those who paid water license fees had no
claim due to fact others served without charge because non-fee proceeds covered those costs].) “The
question is not whether each cost in the agency’s budget is reasonable. Instead, the question is
whether the charge imposed on ratepayers exceeds the reasonable costs of providing the relevant
service. If the agency has sources of revenue other than the rates it imposes, then the total rates
charged may actually be lower than the reasonable costs of providing the service.” (Citizens for Fair
REU Rates v. City of Redding (2018) 6 Cal.5th 1, 17 [applying Prop. 26, citing NCWA v. SWRCB,
supra].) To the extent that the Farmers allege a separate cause of action challenging rates that might
be “imposed” which they do not pay, the Court should sustain the City’s demurrer.

DEFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT
IV. CONCLUSION

The Farmers’ FAC boils down to two claims:

- the rates they pay the City for supplemental agricultural water — as non-resident users who voluntarily take that water when and as they find it economic to do so — are too high; and

- the rates the City charges others are too low.

Because the City does not “impose” agricultural water rates on the Farmers, they have no Proposition 218 or 26 claim. Because they do not pay the rates they allege are too low, the Farmers lack standing to challenge them. Nor would rates below cost offend anything in our Constitution, in any event.

The City thus requests the Court sustain its demurrer without leave to amend, as the Farmers cannot amend the FAC to state a valid claim under the authorities on which they rely. They are bound by the facts they have pleaded to date, which bar their claims under Propositions 218 and 26. (Vallejo Development Co. v. Back Development Co. (1994) 24 Cal.App.4th 929, 946 [sham pleading rule].)

DATED: September 20, 2019

ATCHISON, BARISONE & CONDOTTI
ANTHONY P. CONDOTTI, City Attorney
COLANTUONO, HIGHLSMITH & WHITELAY, PC

MICHAEL G. COLANTUONO
RYAN THOMAS DUNN
CONOR W. HARKINS
Attorneys for Defendant
CITY OF SANTA CRUZ
DECLARATION OF RYAN THOMAS DUNN

I, RYAN THOMAS DUNN, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am Senior Counsel to the law firm of Colantuono, Highsmith & Whalen, PC, attorneys of record for Defendant City of Santa Cruz. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. I write this declaration pursuant to Code of Civil Procedure section 430.41, subdivision (a)(3) to explain how the City met and conferred with counsel for Plaintiffs Sunset Farms, Inc. and M. Rodoni & Company (together, “Farmers”) before filing this demurrer.

3. I met and conferred with the Farmers’ counsel Robert K. Johnson by telephone on July 1, 2019 regarding the City’s concerns it raises in this demurrer, offering authorities for the points I raised. After the call, Mr. Johnson stated he would file an amended complaint addressing only some of the concerns the City raised, indicating his clients’ disagreement with the City’s position on those.

4. The Farmers filed the First Amended Complaint (“FAC”) August 20, 2019. As Mr. Johnson predicted, the FAC addressed some, but not all, of the City’s concerns. On September 4, 2019, I emailed Mr. Johnson, reiterating the City’s concerns the FAC did not address and asking whether he sought to further meet and confer. Attached as Exhibit 1 is a true and correct copy of that email. I obtained it from my firm’s files on this matter. As of the date of this declaration, Mr. Johnson has not responded, and I assume he agrees further meet and confer discussions would not be fruitful.

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

Executed on September 20, 2019 at Pasadena, California.

RYAN THOMAS DUNN
Bob, thanks for sending along the amended complaint in the Sunset Farms matter. We’ve reviewed it, and we’ve determined we’re still going to demur and/or move to strike on the “does not ‘impose’” and “no standing to challenge rates you don’t pay” arguments we raised earlier:

- **Plaintiffs cannot state a Prop. 218 claim because the City does not “impose” the rates they challenge but instead pay these rates voluntarily**
  - Cal. Const., art. XIII C, § 1; Cal. Const., art XIII D, § 6, subd. (a)

- **Plaintiffs lack standing to challenge rates they do not pay**
  - Save the Plastic Bag Coalition v. City of Manhattan Beach (2011) 52 Cal.4th 155, 165
  - Comella v. Los Angeles County etc. Authority (1996) 49 Cal.App.4th 1761, 1773

I sense we have a fundamental disagreement on these points that further meet and confer efforts would not resolve, but if you have authorities we might consider here, please provide them.

If not, we consider our meet and confer efforts under Code of Civil Procedure sections 430.41 and 435.5 exhausted and will draft a demurrer and/or motion to strike. If you disagree, let me know.

Thanks, Bob.

Ryan T. Dunn
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I, Ashley A. Lloyd, declare:

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. My email address is: ALloyd@chwlaw.us. On September 20, 2019, I served the document(s) described as DEFENDANT CITY OF SANTA CRUZ’S DEMURRER TO FIRST AMENDED COMPLAINT; MEMORANDUM; DECLARATION OF RYAN THOMAS DUNN IN SUPPORT on the interested parties in this action addressed as follows:

Robert K. Johnson
Johnson & James LLP
311 Bonita Drive
P.O. Box 245
Aptos, CA 95001-0245
Telephone: (831) 688-8989
Facsimile: (831) 688-0232
Email: jjonesllp@aol.com

Attorneys for Plaintiffs Sunset Farms, Inc.
and M. Rodoni & Company

BY MAIL: The envelope was mailed with postage thereon fully prepaid. 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 at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

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

Executed on September 20, 2019, at Grass Valley, California.

[Signature]
Ashley A. Lloyd
ITEM 5.0 - ORAL AND WRITTEN COMMUNICATIONS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

Sunset Farms, Inc., and M. Rodoni & Company, a California partnership, also known as Mario Rodoni, Plaintiffs,

vs.

City of Santa Cruz, and DOES 1-5,

Defendants.

Case Number: 19CV01725

FIRST AMENDED COMPLAINT
[WRIT OF MANDATE AND CLAIM FOR REFUND]

Plaintiffs Sunset Farms, Inc. ["Sunset"] and M. Rodoni & Company, a California partnership, also known as Mario Rodoni ["Rodoni"], allege as follows:

INTRODUCTORY PARAGRAPHS

1. Plaintiffs are informed and believe thereon allege that defendant City of Santa Cruz ["City"] is and, at all times relevant herein, was a municipal corporation and body politic.

2. The true names of defendants DOES 1-5 are unknown to the plaintiffs. Plaintiffs will amend this complaint upon ascertaining the true identity of defendants DOES 1-5.

3. Plaintiff Sunset is a California Corporation, and plaintiff Rodoni is a partnership.

4. This court has jurisdiction and venue is proper in the County of Santa Cruz pursuant to Code of Civil Procedure § 394.

5. Plaintiffs own and/or lease property which receives gravity-fed, untreated water from

FIRST AMENDED COMPLAINT
the City. The plaintiffs use the untreated, gravity-fed water for agricultural purposes. The plaintiffs' property is located outside the City limits. The City also provides water service to property located within its City limits.

6. The City has furnished water to plaintiffs for many years. The City imposes a charge upon the plaintiffs for the gravity-fed, untreated water it furnishes to them, at rates established by the City. The plaintiffs are directly liable to pay the fees and charges imposed upon them at the rates established by the City.

7. The City increased the rates for the water furnished to the plaintiffs. Prior to increasing the plaintiffs' water rates, the City sent a notice to the public, including the plaintiffs, which purported to be compliant with the requirements of Proposition 218; said notice provided that the revenue generated by the increased water rates will be used to provide for major rehabilitation of the inlet-outlet pipeline in the dam at Loch Lomond; rehabilitation or replacement of the Felton Diversion Dam and Pump Station and the Felton-to-Loch Lomond pipeline; and additional rehabilitation of the Graham Hill Water Treatment Plant. The untreated, gravity-fed agricultural water furnished to the plaintiffs by the City is unrelated to the City's dams, pump stations and/or treatment plants.

7. Plaintiffs are informed and believe and thereon allege that no new or increased property related service has been or will be provided to the plaintiffs as a result of the City's increase in its water rates, including but not limited to any service related to the rehabilitation of the inlet-outlet pipeline in the dam at Loch Lomond, the rehabilitation or replacement of the Felton Diversion Dam and Pump Station and the Felton-to-Loch Lomond pipeline, and the additional rehabilitation of the Graham Hill Water Treatment Plant. The increase in the plaintiffs' water rates greatly exceeds the purported new services, if any, provided to the plaintiffs by the City.

8. The City sent a letter to the public, including the plaintiffs, enclosing what the City purported to be "a copy of the legally required public notice" for the proposed rate increase. The purported legally required notice attached to the City's letter was directed to ratepayers located outside the City limits. The City sent a second constitutionally mandated public notice to ratepayers located within the City limits. Both notices list the identical services to be provided to ratepayers from the
increase in their water rates, but the rate increases to the ratepayers inside and outside the City limits are different. Thus, the ratepayers located outside the City and ratepayers located inside the City are charged different rates when the revenue generated by the rate increases will purportedly be used to provide the same property related services.

9. The plaintiffs are informed and believe and thereon allege that the City is contending that the revenues generated by the increased charge to commercial/residential ratepayers located inside and outside the City limits, and the revenues generated by the increased charge to agricultural ratepayers receiving gravity-fed, untreated water located outside the City limits, will be used to provide the same property related services to both groups, when, in fact, the purported property related services to the two groups are completely different, with the commercial/residential users receiving all of the new purported property related services, and the ratepayers receiving untreated, gravity-fed water receiving none of such purported property related services.

10. The plaintiffs are informed and believe and thereon allege that the City contends that its cost in services related to its providing agricultural water to the plaintiffs and other ratepayers receiving untreated, gravity-fed water has increased from approximately $1.70/CCF to $8.28/CCF, an increase of approximately 500%. This contention is without merit. The cost to provide agricultural water to the plaintiffs and other ratepayers receiving untreated, gravity-fed water has increased little, if any. Plaintiff are informed and believe and thereon allege that no similar increase was imposed by the City for its treated and delivered water furnished to commercial and residential water users despite the fact that the additional cost to deliver treated water to commercial and residential users far exceeds the additional cost, if any, to provide water to the plaintiffs and other agricultural water users.

11. The plaintiffs are informed and believe and thereon allege that the City has provided or intends to provide water to other governmental entities under a "sweetheart" deal whereby such governmental entities have paid and/or will pay less than the plaintiffs pay for agricultural water, and less than similarly situated residential and commercial property owners pay for non-agricultural water. Plaintiffs are informed and believe and thereon allege that the governmental entities receiving water under the sweetheart deal include, but are not limited to, the Sequoia Creek Water District, the City, and
the County of Santa Cruz. Plaintiffs are informed and believe that one of the reasons why the City unlawfully increased the plaintiffs' water rates was in order to generate additional revenues from the plaintiffs, which revenues will be used to offset some or all of the revenues lost by charging governmental entities deflated water rates [i.e., the plaintiffs are being charged exorbitant water rates by the City in order to pay for the discounted water rates being illegally charged to various governmental entities]. The plaintiffs' right to pay constitutionally and statutorily authorized water rates can only be preserved and protected if this Court compels the City to charge governmental entities the same water rates as the rates paid by similarly situated agricultural, commercial, and/or residential users.

12. Plaintiffs are informed and believe thereon allege that the rate increases that the City imposed upon commercial and residential property owners are substantially lower than the rate increases which the City imposed upon the plaintiffs despite the fact that it costs the City substantially less to provide a CCF of water to the plaintiffs than it costs the City to provide a CCF of water to residential and commercial users. The City's cost to provide gravity fed, untreated water to the plaintiffs has not increased and/or has increased substantially less than the rate increase imposed by the City. Plaintiffs are informed and believe that one of the reasons why the City unlawfully increased the water rates imposed upon the plaintiffs was in order to generate additional revenues from the plaintiffs, which revenues can and will be used to offset some or all of the revenues lost by charging commercial and residential users deflated water rates. The plaintiffs' right to pay constitutionally and statutorily authorized water rates can only be preserved and protected if this Court compels the City to charge all water users rates which are statutorily and constitutionally compliant.

13. Plaintiffs are informed and believe thereon allege that the City's own study shows that the plaintiffs should not share in the additional costs related to the treatment plant costs or the potable water distribution system. However, plaintiffs are informed and believe thereon allege that the rate increase is being used to pay such costs. Plaintiffs are further informed and believe and thereon allege that the City's own study also shows that the rates charged to the plaintiffs and other gravity-fed water users should be increased by 110%, not 500%. Even if the City had only increased
the plaintiffs' rates by 110%, such a rate increase does not comply with law since all of the water
received by the plaintiffs is untreated, gravity-fed water, while the water provided to residential and
commercial users is treated and delivered potable water. Thus, the vast majority of the City's rate
payers purportedly receive a service from the City in exchange for the rate increase in the form of the
rehabilitation of the treatment and pumping facilities that supply their water. Only those property
owners receiving gravity-fed, untreated water, including the plaintiffs, fail to receive any such service.
Plaintiffs are informed and believe and thereon allege that despite the plaintiffs receiving no new or
increased service from the revenues generated by the rate increase, they are being charged a rate which
far exceeds the rate charged to those receiving the increased services.

14. Plaintiffs are informed and believe that various governmental entities, including but not
limited to the County of Santa Cruz, the City of Santa Cruz, and the Soquel Creek Water District, pay a
lower rate for their water than the rate paid by other similarly situated ratepayers, in violation of law.

15. Plaintiffs are informed and believe and thereon allege that the revenues collected from
ratepayers located outside the City limits have not been used solely for property related services
provided to ratepayers located outside the City limits.

16. Article XIIIC and XIIID were added to the California Constitution by the voters' passage
of Proposition 218 and Proposition 26. Proposition 218, among other things, imposes procedures and
legal requirements which must be met before any local government can impose or increase a tax, fee or
charge which is an incident of property ownership. Any increased fee or charge, among other things,
(a) cannot exceed the funds required to provide the property related service, (b) cannot be used for any
purpose other than that for which the fee or charge was imposed, (c) cannot exceed the proportional
cost of the service attributable to the parcel, (d) can only be imposed for a service that is actually used
by, or immediately available to, the owner of the property in question, (e) cannot be based on potential
or future use of a service, and (f) cannot be imposed for general governmental services where the
service is available to the public at large in substantially the same manner as it is to property owners.
The water rate increase imposed by the City falls within the provisions of Proposition 218.

17. The water rate increase imposed upon the plaintiffs and other ratepayers by the City,
and the water rate reductions provided to various governmental entities, are invalid and violate law for numerous reasons, including but not limited to the following:

A. Plaintiffs are informed and believe and thereon allege that the City violated constitutional, statutory and other state law, by, among other things, acting in the following manner:

i. The increase in water rates to the plaintiffs exceeds the reasonable costs of the governmental activity and the services provided.

ii. The plaintiffs do not benefit from the City's activities and purported services to the same extent as other ratepayers.

iii. The increase in water rates is structured in such a manner that it requires the plaintiffs to shoulder a disproportionate share of the fiscal burden of supporting the City's activities.

iv. The manner in which the rate increases are allocated to the plaintiffs does not bear a fair or reasonable relationship to the plaintiffs' services and/or burdens on, or services and/or benefits received from, the governmental activities for which the rate increase is collected.

v. The rate increase exceeds the reasonable cost of the service with the surplus used for other purposes.

vi. The amount of fees assessed and paid by the plaintiffs to the City exceeds the reasonable cost of providing the so-called services for which the rate increases were imposed.

vii. The rate increases were levied for revenue purposes unrelated to providing the so-called services for which the rate increase is charged, or which so-called services are permitted under the enabling legislation.

viii. No clear nexus exists between the purposes of the rate increase, and the services purportedly provided to the plaintiffs.

ix. The amount of the rate increase imposed upon the plaintiffs bears no reasonable relationship to the economic or other burdens that the plaintiffs' operations generate.

x. If the rate increases provide any benefit to the plaintiffs, then the rate increases benefit all water users and the general public in the same or greater manner as the plaintiffs, which, among other things, results in a statutory scheme and implementing regulations which provide an unfair,
unreasonable, and substantially disproportionate assessment of all costs related to those paying the
water rates.

xi. The rate increase is imposed for revenue purposes, rather than in return for a specific
service conferred or privilege granted to the plaintiffs, and exceeds the reasonable cost of providing the
services for which the fee is charged.

xii. The rate increase is a tax and/or unlawful fee or charge because it is fixed in an amount that
is more than necessary to cover the reasonable costs of the governmental activity, and the manner in
which those costs are allocated to the plaintiffs and other ratepayers does not bear a fair or reasonable
relationship to the plaintiffs and other ratepayer’s burdens on, and its benefits received from, or services
provided by the governmental activity, and is a tax or improper fee or charge because the City charges
a uniform charge throughout an entire area, rather than imposing the rate increase on a parcel-by-
parcel, or other localized basis.

xiii. The enabling legislation establishing the rate increase, and the regulations and ordinances
created thereunder, are facially unconstitutional because they require a different amount to be paid by
agricultural extractors from the amount to be paid by nonagricultural water users who receive equal or
greater services.

xiv. The City commingles the revenue it generates from the commercial and residential water
users and the revenue it generates from the plaintiffs and other gravity-fed agricultural water users.

B. The plaintiffs are entitled to a refund of all rate increases levied and collected by the
City or to be levied and collected by the City from the plaintiffs, plus interest, for the reason and on the
grounds that such rate increases violate the California Constitution, including, but not limited to Article
XLIIID (“Proposition 218”). Proposition 218, among other things, imposes procedures and legal
requirements for any local government to levy or increase a tax, fee or charge which is an incident of
property ownership. The rate increase to the plaintiffs, and the reduction in charges to various
governmental entities, among other things, (a) exceeds the funds required to provide the property
related service, (b) is or will be used for purposes other than that for which the fee or charge was
imposed, (c) exceeds the proportional cost of the service attributable to the plaintiffs’ parcels, (d) is
imposed for a service that is not actually used by, or immediately available to, the plaintiffs, (e) is
being used on a potential or future use of a service, and (f) is imposed for general governmental
services where the service is available to the public at large in substantially the same manner as it is to
the plaintiffs. The City has failed to comply with applicable procedural and substantive requirements
of Article XIIIID in levying and collecting such rate increases, including but not limited to the
procedural and substantive requirements Article XIIIID, Sections 6a, 6b, and/or 6c.

C. To the extent any or all of the rate increases and charges levied and/or collected by
the City from the plaintiffs are considered taxes, fees, charges and/or assessments not subject to
Proposition 218, the plaintiffs are entitled to a refund of any such increased charges, plus interest, for
the reason and on the grounds that the City has failed to comply with constitutional, procedural and
substantive requirements governing taxes, including but not limited to Article XIIIIC (Proposition 26).

18. The plaintiff duly filed a government claim against the City on or about March 15,
2019. On or about April 24, 2019, the City notified the plaintiffs that the claim was rejected and
denied.

19. Based upon the foregoing, the acts, actions, findings, determinations and proceedings
required to be made, performed or conducted under all applicable laws, prior to and at the time of the
passage of the rate increase, were not properly and lawfully made, performed and/or conducted by the
City; and the rate increases have not been duly, properly and lawfully adopted pursuant to and in
accordance with all laws, whether statutory, constitutional, or decisional; the result of which is that the
rate increases imposed thereunder, are illegal, void and invalid and must be set aside, and all sums
collected thereunder must be refunded.

FIRST CAUSE OF ACTION
(Writ of Mandate)
(Against Defendant City and Does 1-5)

20. Plaintiffs incorporate each and every paragraph above as if set forth in full.

21. At all times herein mentioned, the City has failed to comply with statutory,
constitutional, and decisional law, including but not limited to Propositions 13, 62, 218 and 26, as set
forth above.

22. The City will not abide by statutory, constitutional, and decisional law, and/or cease

FIRST AMENDED COMPLAINT
imposing and illegally enforcing the increased water rates, and collecting the increased water rates from the plaintiffs, and selling water to governmental entities and others at a discount, or refund monies unlawfully collected, unless and until a writ is issued by this court.

23. Plaintiffs have a beneficial interest in the issuance of the writ because they have a clear, present and substantial right to the performance of the City’s duty in that the plaintiffs will be and are being assessed the increased water rates imposed by the City, and paying the increased water rates.

24. Plaintiffs also have a beneficial interest in the issuance of the writ because they are being charged an increased rate so that the City can provide water to governmental entities and others at a discount, and the plaintiffs have a clear, present and substantial right to the performance of the City’s duty in that the plaintiffs will be and will continue to be charged the increased water rates imposed by the City until such time as the City ceases charging discounted water rates to various governmental entities and others.

25. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law, to compel the City to abide by statutory, constitutional, and decisional law, including but not limited to Propositions 13, 62, 218 and 26, or to refund monies illegally collected, or to compel the City to quit charging lower water rates to various governmental entities and others, other than the relief sought in this writ, in that the City will continue to violate statutory, constitutional, and decisional law, including but not limited to, the provisions of Propositions 13, 62, 26 and/or 218, unless enjoined by this court, and otherwise ordered to comply with such constitutional and statutory provisions by not charging the plaintiffs increased water rates or collecting fees based upon the increased water rates, and not providing discounts to various governmental entities and others, including but not limited to the Soquel Creek Water District, County of Santa Cruz and/or the City.

SECOND CAUSE OF ACTION
(Redundant)
(Against Defendant City)

36. Plaintiffs incorporate each and every paragraph above as if set forth in full.

37. The City is authorized to impose and charge property owners, including the plaintiffs, for water, which charges must be imposed in accordance with the law, including Propositions 218 and

FIRST AMENDED COMPLAINT
26. The plaintiffs have paid the City for its water in amounts according to proof in the four years preceding the filing of this complaint. Plaintiffs will pay additional water rates after the filing of their complaint.

29. The water rates collected by the City and paid by the plaintiffs were erroneously and unlawfully collected, assessed and levied in violation of statutory, constitutional, and decisional law, including but not limited to Propositions 13, 26, 62 and 218, as set forth above.

30. As stated above, plaintiffs duly made a claim to the City for a refund of the above referenced water charges, which claim was refused and denied.

31. Plaintiffs are entitled to a refund of all increased water rates imposed by the City and paid to the City that exceed the amount allowed by law, all post-claim amounts paid to the City, and prejudgment interest on said amounts at the statutory rate in amounts according to proof, and otherwise according to proof.

WHEREFORE, plaintiffs pray for entry of judgment as follows:

That judgment be entered on the First Cause of Action as follows:

1. That the court issue a peremptory writ in the first instance (1) commanding the City to cease imposing and charging increased water rates to the plaintiffs, (2) commanding the City to cease charging various governmental entities and others reduced water rates, (3) setting aside and declaring the increased water rates charged to plaintiffs as void, (4) halting the collection of increased water rates imposed by the City, (5) setting aside and declaring the decreased water rates charged to governmental entities and others as void, (6) commanding the City to cease imposing future increased water rates upon the plaintiff until the City complies with the law, (7) commanding the City to cease imposing future decreased water rates to governmental entities and others until the City complies with law; (8) commanding the refund of all sums that the City illegally collected from the plaintiffs; and (9) ordering and enjoining the City from failing to comply with such constitutional and statutory provisions by no longer charging the increased water rates to plaintiffs, or collecting fees based upon the increase water rates, and not providing discounts to various governmental entities and others,
including but not limited to the Soquel Creek Water District, the City and/or the County of Santa Cruz.

2. That the court, alternatively, first issue an alternative writ (1) commanding the City to cease imposing and charging increased water rates to the plaintiffs, (2) commanding the City to cease charging various governmental entities and others reduced water rates, (3) setting aside and declaring the increased water rates charged to plaintiffs as void, (4) halting the collection of increased water rates imposed by the City, (5) setting aside and declaring the decreased water rates charged to governmental entities and others as void, (6) commanding the City to cease imposing future increased water rates upon the plaintiffs until the City complies with the law, (7) commanding the City to cease imposing future decreased water rates to governmental entities and others until the City complies with law, (8) commanding the refund of all sums that the City illegally collected from the plaintiffs, and (9) ordering and enjoining the City from failing to comply with such constitutional and statutory provisions by no longer charging the increased water rates to plaintiffs, or collecting fees based upon the increased water rates, and not providing discounts to various governmental entities and others, including but not limited to the Soquel Creek Water District, the City, and the County of Santa Cruz, or in the alternative, showing cause why it should not do so, and thereafter issue a peremptory writ (1) commanding the City to cease imposing and charging increased water rates to the plaintiffs, (2) commanding the City to cease charging various governmental entities and others reduced water rates, (3) setting aside and declaring the increased water rates charged to plaintiffs as void, (4) halting the collection of increased water rates imposed by the City, (5) setting aside and declaring the decreased water rates charged to governmental entities and others as void, (6) commanding the City to cease imposing future increased water rates until the City complies with the law, (7) commanding the City to cease imposing future decreased water rates to governmental entities and others until the City complies with law, (8) commanding the refund of all sums that the City illegally collected from the plaintiffs, and (9) ordering and enjoining the City from failing to comply with such constitutional and statutory provisions by no longer charging the increased water rates to plaintiffs, or collecting fees based upon the increased water rates, and not providing discounts to various governmental entities and others, including but not limited to the Soquel Creek Water District, the City and/or the County of Santa Cruz.
That judgment be entered on the Second Cause of Action as follows:

1. Plaintiffs receive a refund of all increased water charges paid to the City prior to the filing of this complaint;

2. Plaintiffs receive a refund of all increased water charges paid to the City subsequent to the filing of this complaint; and,

3. Plaintiff be awarded prejudgment interest on said amounts at the statutory rate in amounts according to proof.

That judgment be entered on all causes of action as follows:

1. For reasonable attorney fees and costs;

2. For such other and further relief as the Court may deem just and proper.

JOHNSON & JAMES LLP

Date: August 20, 2019

By: ROBERT K. JOHNSON

Attorneys for Plaintiffs.
Dear Ms. Steinbruner,

On behalf of the District Board of Directors, thank you for your email.

Yes, the initial Water Demand Offset (WDO) program adopted 17 years ago required fixture retrofits as opposed to fees. In order for any program to be successful over the long-term, adaptations are necessary to respond to changing conditions and for continuous improvement. We think the adaptive nature of the District’s award-winning Water Demand Offset (WDO) program has served our customers, developers, and the environment very well since it was created in 2003, and has contributed to its success.

One of the reasons our WDO program has also been recognized in a large survey of such programs as being one of the most transparent is because we go to great lengths to publish and track information related to the program. Please see the Conservation Section of the monthly management reports for periodic updates on the WDO bank status, rebates and other water conserving activities. Our website also provides a wealth of information regarding the program, including now the most current Resolution No. 19-01 ([https://www.soquelcreekwater.org/conserving-water/water-demand-offset-program](https://www.soquelcreekwater.org/conserving-water/water-demand-offset-program)) pertaining to the program. The current and previous resolutions related to the WDO program are also available online in the Board Packets related to the approval of the resolutions.

Regarding the rigorous evaluation we performed to estimate the potential offset credit for the AMI project, we took a conservative approach and thus feel confident our estimates of water savings will be achieved. The methodology and approach are documented in the various board packets that were published (and are available online) at the time of the analysis. As the Board of Directors requested, when sufficient data are available an update of the achieved water savings will be presented at a future Board meeting.

Sincerely,

Ron Duncan  
General Manager  
Soquel Creek Water District | 5180 Soquel Dr., Soquel CA 95073 | www.soquelcreekwater.org  
direct 831-475-8501 x144 | main 831-475-8500

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From: Becky Steinbruner <ki6tkb@yahoo.com>
Sent: Wednesday, May 6, 2020 2:31 PM
To: bod <bod@soquelcreekwater.org>; Emma Olin <emmao@soquelcreekwater.org>
Cc: Becky Steinbruner <ki6tkb@yahoo.com>
Subject: Concern re:Soquel Creek Water District's Use of Water Demand Offset Funds

Dear Soquel Creek Water District Board of Directors,

I listened to District Finance Dept. Director Ms. Leslie Strohm's presentation of the District Budget Memo Item #7.3 in the May 5, 2020 meeting. It concerns me that the Board and Ms. Strohm discussed using the Water Demand Offset (WDO) revenues to back-fill the Capital Reserves Fund.

I have researched the formation of the District's WDO policy, and note the staff presentation of June 3, 2003 to the Board:

"a. Proposed “Zero Impact” Water Demand Offset Program for New Development
Chris Regan made a power point presentation on the Zero Impact Water Demand Offset Program, which is on file. He stated that staff had been directed to develop a program concept that would control or limit the impact of new services on existing water supply. He developed a program concept modeled after the San Luis Obispo and Santa Fe programs. It requires a direct retrofit to be done by the developer and does not allow that a fee be paid in lieu of a retrofit."
https://www.soquelcreekwater.org/sites/default/files/documents/board-meeting/archived/06-03-03m.pdf

The August 5, 2003 public hearing was well-attended by the public. Staff member Mr. Chris White, who developed the WDO policy based on the San Luis Obispo model, stated:

"In response to an inquiry made by Mr. Van Deest, C. Regan explained that the offset program is based on lot size and not the size of the house because lot size determines landscape."
https://www.soquelcreekwater.org/sites/default/files/documents/board-meeting/archived/08-05-03m.pdf

The Board upgraded the WDO policy on July 9, 2013. I attempted to read the Resolution 13-17 below but your website responded with "ACCESS DENIED"

**Water Demand Offset (WDO) Program / Growth / Moratorium**

Key Messages Water Demand Offset Program The District implemented the Water Demand Offset (WDO) Program in 2003 to allow development to continue while conserving water. The WDO Policy (Resolution No. 13-17) requires ...

On July 9, 2013, the Board discussed in a public hearing (Item 4.0) Resolution 13-17 updating the WDO policy to increase requirements to 1.6 WDO factor for everyone, but the Board minutes for that meeting do not include a copy of the Resolution itself. https://www.soquelcreekwater.org/sites/default/files/documents/board-meeting/meeting-minutes/07-09-13%20Minutes.pdf

The District's website does not include any links to the actual Resolutions 03-31, 09-40 or 13-17 that define the District's Water Demand Offset program and justification for collecting fees rather than actual water conservation projects.

While the District's approval of purchase of the NO-DES equipment on July 21, 2015 using WDO funds did qualify as a real water-saving effort, others since approved, such as funding the current AMI Smart
Meter program is questionable. There is no real data to justify that the AMI meters will conserve water and on the face, do not accomplish the criteria that the Board described in their discussion on July 21, 2015 that applicants for new service were allowed to pay in-lieu fees rather than implement real water-conserving toilet fixture upgrades so that the resulting WDO money could be used for large conservation projects that would not have been able to otherwise happen.


The Board's current use of the WDO monies to back-fill budgetary problems does not appear a legally-defensible use of money collected from District applicants at the rate of $55,000/AF anticipated, to fund conservation projects that would not have otherwise happened. Ms. Flock has publicly stated that many of the District's meters were old and failing. Therefore, the District would have had to replace the meters anyway, and most likely would have upgraded to newer technology.

Please explain how your Board can justify using WDO money for what is simply responsible system maintenance and operational upgrades that should be expected of any well-run utility. I feel that those who apply for new service and are forced to pay these Water Demand Offset fees ostensibly to fund real water conservation have the right to know how this money is actually being used, and data to show measurable water saved. The applicant pays the WDO fees prior to the item being scheduled for Board approval.

Those who also depend on the aquifer from which your production wells draw also have a right to understand the real and measurable conservation efforts the District claims it is doing to improve groundwater levels in the Santa Cruz MidCounty Basin.

It was especially distressing to me to hear the Board's discussion at the May 5, 2020 meeting during Item #7.3, suggesting further reductions of the District's Conservation Department, above the $60,000 reduction already proposed.

Please respond in writing. Thank you very much.

Sincerely,
Becky Steinbruner