

**No. F088720**

**IN THE COURT OF APPEAL  
STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

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KINGS COUNTY FARM BUREAU, HELEN SULLIVAN, and JULIE  
MARTELLA,

*Petitioners/Plaintiffs,*

v.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, ET  
AL.,

*Respondents/Defendants.*

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On Appeal from the Superior Court of Kings County Case No. 24CU0198  
The Honorable Katherine A. Ciuffini, Judge Presiding

***AMICUS CURIAE* BRIEF OF CITY OF LEMOORE SUPPORTING  
PETITIONERS**

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## ***AMICUS CURIAE BRIEF LAW AND ARGUMENT***

The following legal background and setting will assist in explaining the contentions made herein.

In 1978, California voters enacted Article XIII A of the California Constitution, colloquially known as Proposition 13 (“Prop. 13”). Prop. 13 inter alia limited the property tax rate to 1% of the assessed valuation, limited yearly increases to the lesser of 2% or the rate of inflation, and requires a two-thirds vote for ad valorem local property taxes for specific purposes like bonds.

To replace revenue lost by the limits on property taxes imposed by Prop. 13, local governments subjected taxpayers to excessive tax, assessment, fee and charge increases that frustrated the purposes of voter approval for tax increases. Revenue producing activities like water and wastewater services fees were increased and funds in excess to the costs of providing the services were diverted to pay for general fund expenses like police, fire, and employee compensation and benefits.

To avoid this “end run” around the tax limitations imposed by Prop. 13, Prop. 218, entitled “The Right to Vote on Taxes Act,” was put before the voters and adopted at the November 5, 1996 general election. Section 2 of Prop. 218 stated:

The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent. This measure protects taxpayers by

limiting the methods by which local governments exact revenue from taxpayers without their consent. 1996 Stats. at A-295.

Prop. 218 added Articles XIII C and XIII D to the California Constitution. Article XIII D was addressed to “Assessment and Property-Related fee Reform.” Water rates are defined as a property-related fee. See Art. XIII D § 2(e). Water rates may not exceed the funds required to provide water service. Id. at 6(b)(1).

In 2014, the Legislature passed the “Sustainable Groundwater Management Act (“SGMA”),” set out at Water Code §§ 10720-10738. The purpose of SGMA is to inter alia eliminate groundwater overdraft, declining groundwater quality, subsidence and to bring the State’s groundwater basins into a sustainable condition by 2040. The State is divided into groundwater basins as identified in Department of Water Resources (“DWR”) Bulletin 118-80 and its successor editions. SGMA provides for the formation of Groundwater Sustainability Agencies (“GSA”) to develop and implement Groundwater Sustainability Plans (“GSP”) with measures to attain the goal of sustainability by 2040. The intent of creation of GSAs and their GSPs is to manage groundwater at the local level. However, if a GSA is not able to develop a GSA approved by DWR, the SWRCB may place that GSA and its associated basin on “probation.” Water Code § 10725.2.

The City is located in the South Fork Kings GSA, which is one of 5 GSAs which overlie what is now termed the Tulare Subbasin. The Tulare Subbasin is located in Kings County and is generally bounded on the north by the Kings River, on the west by the California Aqueduct and the eastern boundary of Westlands Water District, on the east by the Tulare County Line, and on the south by the Kings-Kern County Line. DWR Bulletin 118-80 at 43. Bulletin 118-80 identified the Tulare Lake Subbasin as subject to “critical conditions of overdraft” defined as “A basin is subject to critical conditions of overdraft when continuation of present water management practices would

probably result in significant adverse overdraft-related environmental, social, or economic impacts.” Id. at 11. Therefore the Tulare Subbasin has been subject to critical conditions of overdraft for the last 45 years, but has continued to be a source of groundwater providing sufficient water supplies to users.

The Tulare Subbasin GSAs submitted a GSP which was twice rejected by DWR as inadequate under SGMA. After the second rejection, the SWRCB held a hearing on April 16, 2024, and placed the subbasin on probationary status under SWRCB Resolution No. 2024-0012.

The SWRCB mailed letters dated May 24, 2024 to groundwater pumpers informing them of a \$20 per acre foot fee for each acre foot of groundwater pumped as well as a base fee of \$300.00 per well. Late fees of 25% of the total fee amount would be imposed for each month that the required report is late. The SWRCB’s probation resolution (at pp. 5-6) also provided that the 2022 GSP lacked important details including funding for small domestic well mitigation. See also March 2024 Final Staff Report at 81.

It is clear that extraction fees and well mitigation fees are not allowable costs of providing water service under Prop. 218. Both extraction fees and well mitigation fees are regulatory fees imposed purportedly under the authority of SGMA, though even the Staff Report admits well mitigation fees are not authorized by SGMA. Id. at C-5 to C-6.

The City is aware of no case listing fees which are deemed necessary to provide water service and are permissible under Prop. 218, but the following would certainly be included: Electricity for pumping, Personnel, Contract Services (e.g. lab fees), Chemicals, Parts and Supplies, Repair and Maintenance, Customer Service and Billing, Administrative Overhead, Debt Service for existing debt, Capital Outlay, and Debt Service for new and replacement infrastructure. In short, costs and fees meeting Prop. 218’s

requirements should have a clear, undisputable and necessary nexus to providing the service, in this case potable water service.

It could be argued that the extraction fee and well mitigation fee can be imposed on the City without the City passing them through by adding them to water rates. This would amount to an illegal unfunded mandate. Also, the basis for the extraction fee and for the amount thereof is unknown and thus appears arbitrary and capricious. The well mitigation fees are not authorized by SGMA, as is admitted in the Final Staff Report.

The extraction fees and well mitigation fees imposed by the SWRCB have no nexus to providing water service. They are simply fees ginned up by the SWRCB under its view of its powers under SGMA.

In conclusion neither the extraction fees or well mitigation fees are properly imposed on the City. The City urges the Court to so rule and to affirm the ruling of the trial court. The SWRCB should not be rewarded for its bureaucratic “mission creep.”

DATED: May 1, 2025

GRISWOLD, LaSALLE, COBB,  
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CITY OF LEMOORE

## **CERTIFICATE OF COMPLIANCE**

I certify that the attached brief uses a 13-point Times New Roman font and contains 1,504 words as counted by the Microsoft Word software program used to prepare this brief.

DATED: May 1, 2025

GRISWOLD, LaSALLE, COBB,  
DOWD & GIN, L.L.P

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CITY OF LEMOORE



## PROOF OF SERVICE

### CCP §§ 1011, 1013, 1013a, 2015.5; FRCP 5(b)

I am employed in the County of Kings, State of California. I am over the age of 18 years and not a party to the within action; my business address is 111 E. Seventh Street, Hanford, California 93230.

On May 1, 2025, I served the following document: ***AMICUS CURIAE BRIEF LAW AND ARGUMENT***, on the interested parties in this action as follows:

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**[X] (By Mail)** I am “readily familiar” with the firm's practice of collection and processing correspondence for mailing. Under the practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Hanford, California, in the ordinary course of business.

**[X] (By Electronic Mail)** C.C.P. § 1010.6 and Ca.R.Ct. Rule 2.251. Based upon a court order, local Rules of Court, or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted the above-stated document(s) via e-mail to the above-stated e-mail address(es) and/or I caused the documents to be sent to the persons at the e-mail addresses listed by electronically transmitting and filing the document(s) listed above through a Court approved electronic service provider for service on the parties listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**[X] (State)** I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on May 1, 2025, at Hanford, California.

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SARAH MARKS