

Case No. D080308

COURT OF APPEAL, STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION ONE

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DANIEL PATZ, JOAN MANN CHESNER, et al.,  
*Plaintiff/Petitioner/Respondent/Cross-Appellant,*

*v.*

CITY OF SAN DIEGO,  
*Defendant/Respondent/Appellant/Cross-Respondent*

Appeal and Cross-Appeal from San Diego Superior Court  
The Honorable Eddie C. Sturgeon  
Case No.: 37-2015-00023413-CU-MC-CTL

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**PROPOSED *AMICI CURIAE* BRIEF OF CALIFORNIA  
COASTKEEPER ALLIANCE AND LOS ANGELES  
WATERKEEPER IN SUPPORT OF APPELLANT AND  
CROSS-RESPONDENT CITY OF SAN DIEGO**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Rule 8.208 of the California Rules of Court, there are no interested parties or entities to list in the certificate. (Cal. Rules of Court, rule 8.208 (d)(3).)

Dated: May 19, 2023

Respectfully,

By: /s/ Heather Dadashi  
Heather Dadashi

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 10

II. CALIFORNIA’S WATER SECURITY AND AFFORDABILITY CHALLENGES DEMAND REGULATORY FLEXIBILITY CONSISTENT WITH PROPOSITION 218..... 13

    A. Californians Face Short- and Long-Term Water Security and Affordability Challenges ..... 14

    B. California’s Water Conservation and Equity Laws Drive Water Management and Ratemaking, Alongside Proposition 218 ..... 19

III. TIERED RATES CAN MEET PROPOSITION 218’S PROPORTIONALITY REQUIREMENT, AND THE COURT SHOULD NOT HOLD OTHERWISE OR UNDULY BURDEN AGENCIES’ USE OF TIERED RATES..... 23

    A. Background on Rate Structures and Tiered Rates ..... 23

    B. Tiered Rates Effectively Reflect the Cost of Service and Comply With Proposition 218’s Proportionality Requirement ..... 28

    C. Tiered Rates Advance Equity and Affordability and Are Therefore Critical Tools for Meeting the State’s Water Management Goals ..... 32

    D. Respondents’ Arguments About the City’s Tiered Rate Structure Are Misguided..... 37

IV. THE TRIAL COURT MISAPPLIED PROPOSITION 218 BY IMPOSING AN INFEASIBLY HIGH BURDEN ON WATER PROVIDERS DEFENDING TIERED RATE STRUCTURES ....	39
V. CONCLUSION.....	45
CERTIFICATE OF WORD COUNT.....	46
DECLARATION OF SERVICE.....	47

## TABLE OF AUTHORITIES

### Cases

<i>Bighorn-Desert View Water Agency v. Verjil</i> (2006) 39 Cal.4th 205 .....	29
<i>Brydon v. East Bay Municipal Utility District</i> (1994) 24 Cal.App.4th 178.....	30
<i>Capistrano Taxpayers Ass'n, Inc. v. City of San Juan</i> <i>Capistrano</i> (2015) 235 Cal.App.4th 1493.....	passim
<i>City of Palmdale v. Palmdale Water Dist.</i> (2011) 198 Cal.App.4th 926.....	11, 28, 30, 31
<i>Gin S. Chow v. Santa Barbara</i> (1933) 217 Cal. 673.....	20
<i>Griffith v. Pajaro Valley Water Mgmt. Agency</i> (2013) 220 Cal.App.4th 586.....	29, 37, 42
<i>Hufford v. Dye</i> (1912) 162 Cal. 147.....	22
<i>Joslin v. Marin Municipal Water District</i> (1967) 67 Cal.2d 132.	22
<i>KCSFV I LLC v. Florin Cnty. Water Dist.</i> (2021) 64 Cal.App.5th 1015.....	40, 42, 43
<i>Meridian v. San Francisco</i> (1939) 13 Cal. 2d 424.....	20
<i>Moore v. City of Lemon Grove</i> (2015) 237 Cal.App.4th 363..	37, 40, 42, 43
<i>Morgan v. Imperial Irrigation Dist.</i> (2014) 223 Cal.App.4th 892 .....	29, 40, 42, 43
<i>Patz et al. v. City of San Diego</i> , San Diego Superior Court Case No. 37-2015-00023413-CU-MC-CTL (2021).....	40, 41

### California Constitution

Cal. Const. art. XIII D, § 4(a).....	39
--------------------------------------	----

Cal. Const., art. X, § 2..... 20

Cal. Const., art. XIII D, § 6(b)(3)..... 29, 31

**Statutes**

Cal. Evid. Code § 115..... 39

Cal. Water Code § 106.3 ..... 21, 33

Cal. Water Code § 371(d)..... 38

Cal. Water Code § 372(a)(4) ..... 20, 21

**Other Authorities**

Assem. Bill No. 2882 (2007-2008 Reg. Sess.) ..... 20

Beecher et al., *The National Regulatory Research Institute, Cost Allocation and Rate Design for Water Utilities* (1990) 24, 25, 31

Bittle, *California’s Atmospheric Rivers Are Getting Worse* (Mar. 25, 2023) <<https://www.wired.com/story/california-atmospheric-river-climate-change/>> ..... 14, 15

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Cal. Dep’t Water Res., *California’s Groundwater Conditions Semi-Annual Update: March 2023*..... 15

Cal. State Water Res. Control Bd., *Factors That Can Affect Per Capita Water* (2015) ..... 35

Cal. State Water Res. Control Bd., *Rulemaking to Make Conservation a California Way of Life* (Apr. 6, 2023) <[https://www.waterboards.ca.gov/conservation/regs/water\\_efficiency\\_legislation.html](https://www.waterboards.ca.gov/conservation/regs/water_efficiency_legislation.html)> ..... 13

California’s Fourth Climate Change Assessment (2018) ..... 15

Chappelle & Hanak, Public Policy Institute of California, Water Affordability in California (2021) .....	19
City of Ann Arbor, Michigan, <i>Water and Sewer Rate Setting</i> < <a href="https://www.a2gov.org/departments/public-services/Pages/Water-and-Sewer-Rates.aspx">https://www.a2gov.org/departments/public-services/Pages/Water-and-Sewer-Rates.aspx</a> > .....	25
Cooley et al., The Pacific Institute, Advancing Affordability Through Water Efficiency (Sept. 2022) .....	19, 23, 24
Dawson, <i>How the Recent Storms Impacted San Diego’s Water Supply in Reservoirs</i> (Mar. 9, 2023) < <a href="https://fox5sandiego.com/weather/how-the-recent-storms-impacted-san-diegos-water-supply-in-reservoirs/">https://fox5sandiego.com/weather/how-the-recent-storms-impacted-san-diegos-water-supply-in-reservoirs/</a> > .....	17
Ding, <i>California’s Water Conservation Has Been a Bust so Far. Will Drought Restrictions Work?</i> (May 7, 2022) < <a href="https://www.latimes.com/environment/story/2022-05-07/why-has-water-conservation-in-california-been-a-bust-so-far">https://www.latimes.com/environment/story/2022-05-07/why-has-water-conservation-in-california-been-a-bust-so-far</a> > .....	17
Donnelly & Christian-Smith, The Pacific Institute, An Overview of the “New Normal” and Basic Water Rates (2013) ...	24, 25, 26, 27
Environmental Protection Agency, Understanding Your Water Bill, < <a href="https://www.epa.gov/watersense/understanding-your-water-bill">https://www.epa.gov/watersense/understanding-your-water-bill</a> > .....	24, 25, 26, 27
Gaur & Atwater, California Water Rate Trends (2015) 107 J. American Water Works Ass’n 51 .....	27
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Gomberg et al., Cal. State Water Res. Control Bd. & UCLA Luskin Ctr. for Innovation, Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program (2020) .....	18, 19, 36
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Huddleston, *Biggest Water Users Consume 10 to 20 times More Than Average Household* (Mar. 23, 2014) <<https://www.expressnews.com/news/environment/article/Biggest-water-users-consume-10-to-20-times-more-5341194.php>>.. 32

Logar, Salzman, & Horowitz, UCLA L. Pritzker Env't L. and Pol'y Briefs, *Ensuring Safe Drinking Water in Los Angeles County Small Water Systems* (2018) ..... 18

Mount et al., *Priorities for California's Water, Public Policy Institute of California* (2022) ..... 14

Nat'l Oceanographic and Atmospheric Admin. & Nat'l Integrated Drought Info. Sys., *California-Nevada Drought & Climate Outlook Webinar: November 28, 2022* ..... 15

Office of Governor Gavin Newsom, *Governor Newsom Convenes Summit with Local Water Leaders, Urges More Aggressive Response to Ongoing Drought* <<https://www.gov.ca.gov/2022/05/23/governor-newsom-convenes-summit-with-local-water-leaders-urges-more-aggressive-response-to-ongoing-drought/#:~:text=In%20July%202021%2C%20Governor%20Newsom,response%20to%20the%20ongoing%20drought>> ..... 16

Our County: Los Angeles Countywide Sustainability Plan ..... 35

Pierce & Gmoser-Daskalakis, UCLA Luskin Ctr. for Innovation, *Community Water Systems in Los Angeles County: A Performance Policy Guide* (2020) ..... 25

Public Policy Institute of California, *Paying for Water* (2016) ... 33

Rachunok & Fletcher, *Socio-Hydrological Drought Impacts on Urban Water Affordability* (2023) 1 *Nature Water* 83. 10, 18, 19

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Salt, <i>Structuring Tiered Water Rates Under Conflicting Court Decisions: Interpreting the California Constitution</i> (2016) 108 J. American Water Works Ass'n 32 .....	passim
Smith & Mays, <i>Newsom Rolls Back California Drought Restrictions After Remarkably Wet Winter</i> (Mar. 24, 2023) LA Times < <a href="https://www.latimes.com/california/story/2023-03-24/newsom-rolls-back-california-drought-restrictions">https://www.latimes.com/california/story/2023-03-24/newsom-rolls-back-california-drought-restrictions</a> > .....	16
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State Water Res. Control Bd. Resolution No. 2016-0010 .....	21
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Stone & Johnson, <i>Conserving for the Common Good: Preferences for Water Conservation Policies During a Severe Drought in Northern California</i> (2022) 37 Water Res. and Econ. 1 .....	35
Sun et al., <i>Understanding End-of-Century Snowpack Changes Over California's Sierra Nevada</i> (Nov. 2018) 46 Geophysical Res. Letters 933 .....	15
Teodoro, <i>Measuring Fairness: Assessing the Equity of Municipal Water Rates</i> (2005) 97 J. American Water Works Ass'n 111... 28	
Water Rate Structures in Colorado: How Colorado Cities Compare in Using this Important Water Use Efficiency Tool, Western Resource Advocates (2004).....	36, 37
Williams et al., <i>Rapid Intensification of the Emerging Southwestern North American Megadrought in 2020–2021</i> (2022) 12 Nature Climate Change 232.....	14
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## AMICI CURIAE BRIEF<sup>1</sup>

### I. INTRODUCTION

California’s water is becoming increasingly precious as climatic conditions change. Meanwhile, the state’s population and economy continue to grow. These colliding forces are making water more scarce and less affordable, especially for many low-income customers. Drought-induced water shortages force “water providers to invest in additional supplies or enact expensive, short-term emergency measures. These costs are frequently passed on to households through increased rates and surcharges,” falling disproportionately on low-income households. (Rachunok & Fletcher, *Socio-Hydrological Drought Impacts on Urban Water Affordability* (2023) 1 Nature Water 83, 83.) The state’s current and future water supply challenges require water managers to make use of all available conservation strategies to meet demand and to improve equity in water rates.

But the trial court’s decision in this case needlessly jeopardizes water agencies’ ability to use one of the best tools available to advance conservation and equity goals: tiered water

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<sup>1</sup> No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, and no one other than *amici*, and their counsel of record, made any monetary contribution intended to fund the preparation or submission of the brief.

rates,<sup>2</sup> by which agencies charge higher rates for additional increments of water use. Such rate structures bill customers according to the strain they impose on the utility’s water system, ensuring that the marginal costs of investing in additional infrastructure and securing expanded water supplies properly fall to those who create the demand for that additional investment and supply, and are not inequitably borne by the system’s most modest water users.

Tiered rate structures are—as multiple California courts have held—entirely consistent with the strictures of Proposition 218. (*Capistrano Taxpayers Ass’n, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1497-98, as modified (May 19, 2015) (*Capistrano*); see also *City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, 936-37 (*Palmdale*)). Accordingly, the City of San Diego (the City) uses a tiered rate structure for the single family residential (SFR) customer class that charges higher rates as water consumption increases. The trial court invalidated the City’s tiered water rates for the SFR customer class. The trial court’s decision, however, adopts an unlawfully narrow interpretation of the requirements of Proposition 218, one that threatens to shrink the availability of the important tool of tiered rates to the vanishing point. It also

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<sup>2</sup> Block or tiered rates are designed so that the unit price of water changes based on the level of use. Increasing block rates charge progressively higher prices as water use increases. “Increasing block rates” and “tiered rates” are referred to interchangeably throughout this brief.

brings Proposition 218 into conflict with California's core water conservation and equity goals and laws.

As organizations with significant interest and expertise in water management, we write to highlight the broader policy context at play in this case and the dangers of affirming the trial court's approach. First, we provide background on California's water scarcity challenges and on its conservation and affordability goals. Second, we explain how tiered rates work to advance the state's conservation goals; promote equity and affordability; and accurately reflect the cost of providing water service to individual users by imposing higher rates on users who are most responsible for increased capital expenditures, consistent with Proposition 218's proportionality requirement. Finally, we argue that upholding the trial court's decision would impose an infeasibly and unlawfully high burden on water providers defending water rates, tiered or otherwise, and would therefore undercut increasingly important and widespread equitable water rate design practices through the state.

A narrow interpretation of Proposition 218 that significantly restricts water agencies' ability to enforce tiered rates undermines the very equity goals that Proposition 218 was intended to promote. It would result in sharp cost increases for customers who use relatively little water and cost reductions for customers whose profligate use of water drives the need for system expansions. Such an interpretation would also likely lead to the creation of rates that send a poor price signal to customers about the true cost of water service and fail to incentivize

conservation. As a result, agencies will likely be forced to invest more in costly infrastructure and water supplies. And without tiered rates, it will become even more challenging for low-income users to afford water in the future.

## II. CALIFORNIA’S WATER SECURITY AND AFFORDABILITY CHALLENGES DEMAND REGULATORY FLEXIBILITY CONSISTENT WITH PROPOSITION 218

California’s constitutional and legislative history make clear that “water conservation is a necessity and way of life in the state.”<sup>3</sup> (Salt, *Structuring Tiered Water Rates Under Conflicting Court Decisions: Interpreting the California Constitution* (2016) 108 J. American Water Works Ass’n 32, 32.) Conservation continues to be an ever-important priority, as climate change intensifies California’s hydrologic variability and exacerbates the state’s water supply challenges. Low-income Californians, who already struggle to pay for water, will bear the brunt of these supply problems and will face even greater difficulty affording

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<sup>3</sup> In fact, the California State Water Resources Control Board is currently considering a rulemaking, labelled “Making Conservation a California Way of Life[,]” which establishes unique efficiency goals for each [California] Urban Retail Water Supplier and [grants] suppliers flexibility to implement locally appropriate solutions.” Cal. State Water Res. Control Bd., *Rulemaking to Make Conservation a California Way of Life* (Apr. 6, 2023) <[https://www.waterboards.ca.gov/conservation/regs/water\\_efficiency\\_legislation.html](https://www.waterboards.ca.gov/conservation/regs/water_efficiency_legislation.html)> [as of May 2, 2023]. The goal of the regulation is “to protect California’s access to clean and affordable water” by prioritizing “long-term practices that adapt communities to California’s ongoing water challenges.” (*Id.*)

water in the future. In light of these challenges, it is essential for rate structures to send a signal to customers to use water efficiently. Proposition 218 is consistent with—and can advance—California’s other water policies and programs and is essential to support the future of California’s population and economy.

### **A. Californians Face Short- and Long-Term Water Security and Affordability Challenges**

Droughts and hydrologic variability are recurring features of California’s climate and are becoming more severe. In the last decade, the state has entered a new phase of climate change: its already variable climate is becoming increasingly unpredictable, with hotter and more arid dry periods and warmer, more intense, yet infrequent wet periods. (Mount et al., [Priorities for California’s Water](#), Public Policy Institute of California (2022) p. 3.) The “atmospheric river” storms that have battered California this winter are part of a system that features long episodes of drought interrupted by huge torrents of rain.<sup>4</sup> But drought conditions remain and will likely continue to worsen.

According to experts, the state needs several years, or even decades, of normal or above-average wet conditions, combined with appropriate management actions, to undo the West’s driest 22-year period in the past 1,200 years. (Williams et al., [Rapid Intensification of the Emerging Southwestern North American Megadrought in 2020–2021](#) (2022) 12 *Nature Climate Change*

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<sup>4</sup> Bittle, *California’s Atmospheric Rivers Are Getting Worse* (Mar. 25, 2023) <<https://www.wired.com/story/california-atmospheric-river-climate-change/>> [as of Apr. 10, 2023].

232, 232; Nat'l Oceanographic and Atmospheric Admin. & Nat'l Integrated Drought Info. Sys., [California-Nevada Drought & Climate Outlook Webinar: November 28, 2022](#); Cal. Dep't Water Res., [California's Groundwater Conditions Semi-Annual Update: March 2023](#), p. 1.)

Most profoundly, the impact of climate change on the state's snowpack—a once-reliable source of annual water supply—will exacerbate water security problems over time. (See [California's Fourth Climate Change Assessment](#) (2018), p. 26; Sun et al., [Understanding End-of-Century Snowpack Changes Over California's Sierra Nevada](#) (Nov. 2018) 46 *Geophysical Res. Letters* 933, 933-43.) “The warmer it gets in California, the more precipitation arrives as rain rather than snow[.]”<sup>5</sup> These rising temperatures will reduce the “free” seasonal water storage provided by the Sierra Nevada snowpack and change runoff patterns, increasing winter and spring flood risk. The resulting decrease in natural water storage capacity will tax California's management systems and already aging reservoir infrastructure.<sup>6</sup>

These factors place the state's ability to maintain “safe, reliable, and environmentally sustainable water service” in jeopardy. (Hanak et al., [Paying for Water in California](#), Public Policy Institute of California (2014) p. 9.) In July 2021, when the majority of the state was in the throes of a critical drought, Governor Newsom called on Californians to voluntarily reduce

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<sup>5</sup> Bittle, *supra* note 4.

<sup>6</sup> *Id.*; Sun et al., *supra*, at p. 933.

their water use by 15% and subsequently issued an Executive Order calling on local water agencies to escalate their response to the ongoing drought, after the state failed to meet its 15% goal.<sup>7</sup> Although the governor recently rolled back some of these restrictions, he stopped short of rescinding his drought emergency order, which remains important as California adapts to erratic weather patterns and the looming possibility of another lengthy dry spell.<sup>8</sup>

Late last year, the California Department of Water Resources “released its first annual water supply and demand report that assesses how the state is faring with water supply amid unrelenting drought conditions.”<sup>9</sup> Pursuant to Governor Newsom’s 2021 Executive Order, this was the first year

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<sup>7</sup> Office of Governor Gavin Newsom, *Governor Newsom Convenes Summit with Local Water Leaders, Urges More Aggressive Response to Ongoing Drought* <<https://www.gov.ca.gov/2022/05/23/governor-newsom-convenes-summit-with-local-water-leaders-urges-more-aggressive-response-to-ongoing-drought>> [as of Dec. 22, 2022].

<sup>8</sup> Smith & Mays, *Newsom Rolls Back California Drought Restrictions After Remarkably Wet Winter* (Mar. 24, 2023) LA Times <<https://www.latimes.com/california/story/2023-03-24/newsom-rolls-back-california-drought-restrictions>> [as of Apr. 10, 2023].

<sup>9</sup> Ramirez, *More Than 70 Water Agencies in California Could Face Water Shortages in the Coming Months, State Report Shows* (Nov. 30, 2022) <<https://www.cnn.com/2022/11/30/us/california-water-shortage-report-drought-climate/index.html>> [as of Jan. 18, 2022]; Cal. Dep’t of Water Res., 2022 Annual Water Supply and Demand Assessment Summary Report.



California water suppliers were “required to submit water shortage reports as climate change strains supply across the state.”<sup>10</sup> Nearly 20% of California’s urban water agencies—mainly in California’s most populated hydrologic areas, including San Diego—reported imminent water shortages. Although this year’s rains have helped fill two of San Diego County’s reservoirs, experts warn that these are merely short-term gains and will not be enough to fully recover given the climate pattern of longer, hotter periods and frequent dry winters.<sup>11</sup> Wet years are only useful if authorities use collected water efficiently and conserve for drier months.<sup>12</sup>

Meanwhile, dwindling water supplies have led to a substantial increase in the retail cost of water over the last

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<sup>10</sup> Ramirez, *supra*, note 9.

<sup>11</sup> Dawson, *How the Recent Storms Impacted San Diego’s Water Supply in Reservoirs* (Mar. 9, 2023) <<https://fox5sandiego.com/weather/how-the-recent-storms-impacted-san-diegos-water-supply-in-reservoirs/>> [as of Apr. 10, 2023].

<sup>12</sup> See *id.* Between July 2021—when Governor Newsom urged Californians to slash water use by 15%—and February 2022, “statewide cumulative water savings have amounted to just 5.8% relative to a 2020 baseline.” In Southern California, “which had ample reserves last year...water use dropped by just 4.6% in the same period, and the Los Angeles Department of Water and Power saw just 2.6% cumulative savings.” Ding, *California’s Water Conservation Has Been a Bust so Far. Will Drought Restrictions Work?* (May 7, 2022) <<https://www.latimes.com/environment/story/2022-05-07/why-has-water-conservation-in-california-been-a-bust-so-far>> [as of May 8, 2023].

decade, which “has dramatically outpaced inflation in California (and the U.S. more broadly)[.]” (Gomberg et al., Cal. State Water Res. Control Bd. & UCLA Luskin Ctr. for Innovation, [Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program](#) (2020) p. 17; Rachunok & Fletcher, *supra*, at p. 83.) Adjusting for inflation, “the average Californian household paid around 45% more per month for drinking water service in 2015 than in 2007.” (Gomberg et al., *supra*, at p. 7.) And while the average California household in 2015 paid around \$41 per month for 6 hundred cubic feet (HCF) of drinking water service, many systems charge rates higher than the state average, with some charging one and a half, two, or three times the average price for the same amount of water. (*Id.* at 19.) The state’s population distribution, geography, and hydrology mean that source water quality and quantity vary greatly, and many smaller systems face high costs to acquire and treat water. (*Id.*)<sup>13</sup> Moreover, financial analysts project that the retail price of water will rise significantly in California over the coming years. (*Id.* at 17.)

This growing cost, along with the rise in income inequality and California’s high cost of living, has made it increasingly

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<sup>13</sup> Because smaller water systems “frequently fail to benefit from the efficiencies that flow from economies of scale[.]” they often possess “fewer sources of water available to them and fewer financial and personnel resources.” They also have “less developed infrastructure and can struggle to raise money to fund improvements or address problems.” (Logar, Salzman, & Horowitz, UCLA L. Pritzker Env’t L. and Pol’y Briefs, [Ensuring Safe Drinking Water in Los Angeles County Small Water Systems](#) (2018) p. 5.)

difficult for California households to afford drinking water. (*Id.* at 7; Cooley et al., The Pacific Institute, [Advancing Affordability Through Water Efficiency](#) (Sept. 2022) p. 5.) Currently, 34% of California residents—roughly 13 million people—live in households with incomes under 200% of the federal poverty level (the eligibility threshold commonly used for existing rate assistance programs), which was \$50,200 for a family of four in 2018. (Gomberg et al., *supra*, at p. 13.) The burden of rapidly rising drinking water costs falls disproportionately on Californians living in low-income households, many of whom have seen their incomes stagnate. (*Id.* at 7.) The State Water Resources Control Board (State Water Board) “recently estimated that 21% of the state’s water systems, serving 18% of all residents, have water rates that are unaffordable for basic needs like cooking, washing, and drinking.” (Chappelle & Hanak, Public Policy Institute of California, [Water Affordability in California](#) (2021) p. 1.) The high and rising costs of other necessities means that cost increases for water can force families to make difficult tradeoffs and lead to service disconnections which could harm their health and welfare. (Gomberg et al., *supra*, at p. 7, 16; see also Rachunok & Fletcher, *supra*, at p. 83.)

### **B. California’s Water Conservation and Equity Laws Drive Water Management and Ratemaking, Alongside Proposition 218**

The last century has seen the creation of several laws, policies, and programs intended to promote conservation and efficiency as well as equity among all Californians. As early as

1928, water conservation was recognized as a necessity and enshrined in the California Constitution with the adoption of Article X, Section 2, prohibiting waste, unreasonable use, and unreasonable method of use of water. (Cal. Const., art. X, § 2; *Gin S. Chow v. Santa Barbara* (1933) 217 Cal. 673, 700 [describing the amendment as “an endeavor on the part of the people of the state, through its fundamental law, to conserve a great natural resource”]; *Meridian v. San Francisco* (1939) 13 Cal. 2d 424, 449 [“It was undoubtedly the purpose of the proponents of the amendment of 1928 to make it possible to marshal the water resources of the state and make them available for the constantly increasing needs of all of its people”].) This constitutional mandate and resulting legislative enactments designed to fulfill its purposes have played a key historical role in structuring water rates to encourage conservation. (Salt, *supra*, at p. 33.)

In fact, the state has explicitly endorsed tiered water rates as a means of advancing the goals of Article X, Section 2 while being consistent with Proposition 218’s proportionality requirements. In 2008, twelve years after Proposition 218’s ratification, the state Legislature granted public water suppliers discretion to enact tiered rates by amending the California Water Code to authorize allocation-based conservation pricing. (Assem. Bill No. 2882 (2007-2008 Reg. Sess.)) This pricing scheme involves retail rate structures that provide customers with a basic use allocation and imposes conservation charges on “all increments of water use in excess of the basic [] allocation.” (Cal. Water Code § 372(a)(4).) The Legislature indicated that tiered

rate structures may be determined on any suitable basis “without limitation on the number of increments, or any requirement that the increments or conservation charges be sized, or ascend uniformly, or in a specified relationship.” (*Id.*) Consistent with Article X, Section 2, the statute also provides that “[t]he volumetric prices for the lowest through the highest priced increments shall be established in an ascending relationship that is economically structured to encourage conservation and reduce the inefficient use of water.” (*Id.*)

Several years after the enactment of California Water Code Section 372, AB 685 was signed into law, making California the first state in the nation to legally recognize the human right to water (HRTW). AB 685 statutorily recognizes that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” (Cal. Water Code § 106.3.) To advance the goals of the HRTW, the State Water Board adopted a resolution in 2016 making the HRTW a core value and priority across all programs administered by the State Water Board and Regional Water Quality Control Boards. ([State Water Res. Control Bd. Resolution No. 2016-0010](#).) The legislature also passed SB 200 in 2019, which enabled the State Water Board to establish the Safe and Affordable Funding for Equity and Resilience (SAFER) Program. “SB 200 established a set of tools, funding sources, and regulatory authorities that the State Water Board harnesses through the SAFER program to help struggling public water systems . . . sustainably and affordably provide safe drinking

water.” (Cal. State Water Res. Control Bd., [California Development Strategy for Public Water Systems: 2022 Revised Draft Strategy Outline](#), p. 2.)

California courts have also historically recognized conservation as an important value of the state in a variety of contexts, including ratesetting, starting in the early 20<sup>th</sup> century. (See, e.g., *Hufford v. Dye* (1912) 162 Cal. 147, 159 [“The use of water in this state is of such great necessity as to preclude its being allowed to run to waste”].) Courts in more recent decades have continued to note the importance of conservation in California water law and policy. For example, in *Joslin v. Marin Municipal Water District* (1967) 67 Cal.2d 132, 140, the Court emphasized “the ever increasing need for the conservation of water in this state, an inescapable reality of life.” Since Proposition 218 was enacted, courts have interpreted this constitutional provision to be compatible with water conservation, especially in tandem with Article X, Section 2’s prohibition on waste and unreasonable use. The court in *Capistrano* held that Article X, Section 2 and Proposition 218’s proportionality requirement “work together to promote increased supplies of water[.]” *Capistrano, supra*, 235 Cal.App.4th at p. 1511.)

These water laws, policies, and programs reflect the overriding statewide mandate to responsibly and equitably manage this vital resource. Proposition 218 can and should be interpreted in ways that are consistent with, and implement the intent behind, California’s longstanding requirements to conserve

water supplies. “While California’s water supply is limited and continues to diminish, the state’s population and economy continue to grow.” (Salt, *supra*, at p. 33.) Enhancing conservation and implementing efficient water resource management practices, both in drought and non-drought years, is critical for the long-term sustainable use of water in California. As discussed further below, properly designed tiered rates promote conservation and equity, while also reflecting cost of service.

### **III. TIERED RATES CAN MEET PROPOSITION 218’s PROPORTIONALITY REQUIREMENT, AND THE COURT SHOULD NOT HOLD OTHERWISE OR UNDULY BURDEN AGENCIES’ USE OF TIERED RATES**

Tiered rates are consonant with the proportionality requirement of Proposition 218 and effectively reflect the cost of water service. They are also well-suited for incentivizing conservation and advancing equity among users.

#### **A. Background on Rate Structures and Tiered Rates**

Water rates are “calculated by dividing the cost of the system by the water delivered.” (Cooley et al., *supra*, at p. 8.) There are a variety of ways water providers allocate the total cost of water service to their customers. From the individual customer’s vantage point, an agency’s cost of water provision is reflected in a periodic fee for service, such as a monthly or bi-monthly water bill.

Choosing an appropriate rate structure will always entail tradeoffs and, therefore, there is no “one-size-fits-all” rate structure. Rather, each community must

determine which structure is most appropriate based on customer water usage patterns, the need for long-term water supply reliability, and the ability of the structure to achieve the social and economic goals established by the community.

(Donnelly & Christian-Smith, The Pacific Institute, [An Overview of the “New Normal” and Basic Water Rates](#) (2013) p. 12.)

Most water bills involve a combination of fixed charges (which do not vary with water consumption) and variable charges (which do vary with water consumption). (Beecher et al., The National Regulatory Research Institute, [Cost Allocation and Rate Design for Water Utilities](#) (1990) p. 105.) There are three common consumer rate structures used in the water industry: (1) flat or fixed rates, (2) uniform rates, and (3) tiered or block rates (which can be further broken down into increasing and decreasing block rates). (Donnelly & Christian-Smith, *supra*, at pp. 7-8.) Uniform and tiered rates are variable, volumetric fees that require metered service and are based on a customer’s level of use. (*Id.* at 8.)

A fixed fee is the simplest way to bill customers for water service, charging customers the same amount, regardless of consumption level.<sup>14</sup> It can include “payment of interest and principal on past infrastructure investments and insurance.” (Cooley et al., *supra*, at p. 8.) This rate structure provides the

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<sup>14</sup> Environmental Protection Agency, Understanding Your Water Bill, <<https://www.epa.gov/watersense/understanding-your-water-bill>> (last updated Jan. 23, 2023); Beecher et al., *supra*, at p. 106.



most revenue stability for water systems but sends a poor price signal to customers about the cost of water service and does not incentivize conservation. (Pierce & Gmoser-Daskalakis, UCLA Luskin Ctr. for Innovation, [Community Water Systems in Los Angeles County: A Performance Policy Guide](#), (2020) p. 21; Beecher et al., *supra*, at p. 106.) It is rarely used today; in 2006, fixed fees were used in less than 10% of surveyed utilities in California.<sup>15</sup>

A uniform rate charges consumers the same price for each unit of water consumed, regardless of consumption levels. “While the unit price for water does not change according to use, the total price of water increases as a customer uses additional units of water.” (Donnelly & Christian-Smith, *supra*, at p. 8 (emphasis omitted).) Because uniform rates usually reflect the utility’s total production costs divided by the total amount consumed, or the average cost of a unit of water, they fail to track unit costs of water provision with precision. (Beecher et al., *supra*, at pp. 111, 113.) Rate averaging associated with uniform rates means that “costs are lumped together with no prioritization for how water is used” or regard for whether that use is wasteful or unreasonable.<sup>16</sup>

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<sup>15</sup> Environmental Protection Agency, Understanding Your Water Bill, *supra*; Donnelly & Christian-Smith, *supra*, at p. 11.

<sup>16</sup> City of Ann Arbor, Michigan, *Water and Sewer Rate Setting* <<https://www.a2gov.org/departments/public-services/Pages/Water-and-Sewer-Rates.aspx>> [as of May 5, 2023].

By contrast, block or tiered rates “are designed so that the unit price of water changes according to the level of use.” (Donnelly & Christian-Smith, *supra*, at p. 8.) Decreasing block rates charge customers a lower unit price as their water use increases. They are popular in rural areas that service large farming populations or areas with large users such as heavy industry and where water is plentiful.<sup>17</sup> Because decreasing block rates do not send a cost signal to customers to conserve, they have been nearly phased out in California. (Donnelly & Christian-Smith, *supra*, at p. 8.)

On the other hand, increasing block rates—also referred to as “tiered rates”—charge progressively higher prices as water use increases. (*Id.*) “When the volume of water used reaches specified thresholds, the customer’s subsequent water use is charged at a higher rate within the next tier.” (Yraceburu, *The Problem with Proportionality: The Effect of Proposition 218 on Retail Water Rates for Community Gardens in Los Angeles* (2020) Cal. Water L.J.) Increasing block rates “are designed to allocate a greater share of the cost of providing service to those whose water use creates greater demands and burdens on an agency’s water system”; these greater demands generate “additional costs to a local agency for providing water service.” (Salt, *supra*, at p. 33.) Increasing block rates “also have the incidental effect of encouraging conservation by sending a price signal to water users that by using more water, they will have to pay more.” (*Id.*)

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<sup>17</sup> Environmental Protection Agency, Understanding Your Water Bill, *supra*.

Consumers respond to this price signal by reducing their consumption. Increasing block rates are most often found in urban areas and areas with limited water supplies.<sup>18</sup> This type of rate structure is the type at issue in this appeal, and in the vast majority of disputes over ratemaking today.

Counties throughout the state are moving toward increasing block rate structures. “While uniform volumetric rates remain common, increasing block rate structures are becoming much more prevalent in California” and are one of the most frequently used structures today. (Donnelly & Christian-Smith, *supra*, at p. 10; Salt, *supra*, at p. 33.) Southern California experienced a dramatic increase in inclining rate structures, more than doubling from 34% of counties in 2003 to 71% in 2013. (Gaur & Atwater, *California Water Rate Trends* (2015) 107 J. American Water Works Ass’n 51, 54.) An American Water Works Association survey on water agencies’ rate structures in fourteen counties throughout California, including Los Angeles, San Diego, and San Francisco, found that in 2003, “only 39% of the counties had an inclining rate structure[.] In 2015, this number increased to 67%.” Conversely, uniform rate structures decreased from 50 to 21% during that same period. (Gaur & Diagne, *California Water Rate Trends: Maintaining Affordable Rates in a Volatile Environment* (2017) 109 J. American Water Works Ass’n 46, 48.)

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<sup>18</sup> Environmental Protection Agency, Understanding Your Water Bill, *supra*.

In sum, tiered water rate structures are on the rise and simultaneously allow water agencies to collect class-specific costs of providing service at each usage level, while sending a conservation-oriented price signal to each class. At the same time, they are the best way to ensure that those users who place higher demands on the system pay a larger portion of the costs, in line with cost-of-service requirements.

**B. Tiered Rates Effectively Reflect the Cost of Service and Comply With Proposition 218's Proportionality Requirement**

Tiered rates, and particularly four-block rate structures like the one employed by the City of San Diego here, most closely approximate rates that reflect the actual cost of service attributable to individual customers. (Teodoro, *Measuring Fairness: Assessing the Equity of Municipal Water Rates* (2005) 97 J. American Water Works Ass'n 111, 120, 123.) As some individual customers use significantly more water than average users, the entire water system must adapt to that increasing demand, which raises costs. Increasing block rates properly allocate higher service expenses to consumers whose above-average usage requires additional expenditures and the acquisition of that last, expensive increment of supply. In this way, tiered rates can proportionally allocate costs among users and are entirely consistent with Proposition 218. (*Capistrano, supra*, 235 Cal.App.4th at pp. 1497-98, 1511, 1515; see also *Palmdale, supra*, 198 Cal.App.4th at pp. 936-37.)

Proposition 218 limits agencies from charging for water anything more than “the proportional cost of service attributable to the parcel.” (Cal. Const., art. XIII D, § 6(b)(3).) True costs need not be allocated to ratepayers based on any “precise calculation” but can be set based on the “revenue requirements” of a service system. (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 918; *Griffith v. Pajaro Valley Water Mgmt. Agency* (2013) 220 Cal.App.4th 586, 601 [disapproved of by *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal. 5th 1191 on other grounds] (*Griffith II*); *Capistrano, supra*, 235 Cal.App.4th at 1514 [holding that agencies may “work backwards” from total costs to determine the appropriate pricing, so long as the true cost of service is ascertained by the agency].) California “courts have made it clear they interpret the Constitution to allow tiered pricing for water[,]” (*Capistrano, supra*, 235 Cal.App.4th at p. 1511), so long as they “still correspond to the actual cost of providing service at a given level of usage.” (*Id.* at pp. 1497-98 [citing *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 226].)

Under *Capistrano*’s interpretation of Article XIII D, Section 6(b)(3), agencies should allocate a greater portion of the costs to upsize facilities to higher-consumptive customers who place higher demand on the system, and tiered rates help to ensure this allocation. The reasoning in *Capistrano* prevents low-consumptive users from having to shoulder the cost of increased capital expenses incurred by above-average users. In ruling on the agency’s decision to allocate the costs for a recycled water

plant to all customers, the *Capistrano* court noted that water agencies make large capital investments to upsize facilities to meet increasing demand well in advance of the need to meet such demand. (*Capistrano, supra*, 235 Cal.App.4th at p. 1503.) It explained, “Proposition 218 protects lower-than-average users from having to pay rates that are *higher than the cost of service for them* because those rates cover capital investments their levels of consumption do not make necessary.” (*Id.* [emphasis in original].)

Quoting *Brydon v. East Bay Municipal Utility District* (1994) 24 Cal.App.4th 178, 202, the *Capistrano* court acknowledged that “[t]o the extent that certain customers overutilize the resource, they contribute disproportionately to . . . the requirement that the District acquire new sources for the supply of domestic water.” (*Id.*) According to the court, “nothing . . . prevents water agencies from passing on the incrementally higher costs of expensive water to incrementally higher users.” (*Id.* at p. 1511.) And “nothing in article XIII D, section 6, subdivision (b)(3)...is incompatible with water agencies passing on the true marginal cost water to those consumers whose extra use of water forces water agencies to incur higher costs to supply that extra water. Precedent and common sense both support such an approach.” (*Id.* at p. 1516; see also *Palmdale, supra*, 198 Cal. App. 4th at pp. 936–37.)

Thus, *Capistrano* interprets Article XIII D, Section 6(b)(3) to allow agencies to allocate a greater portion of the costs to expand facilities to higher-consumptive customers who place

above-average demand on the system. In addition, lower-consumptive users cannot be forced to bear the cost of increased capital expenditures their use does not make necessary. Under *Capistrano*, the highest water users drive total infrastructure costs and are therefore responsible for a greater portion of these costs. Tiered rates effectively reflect the proportional cost of providing water to individual customers and comport with Proposition 218's proportionality requirement.

Under *Capistrano*, even if tiered rates are implemented with the explicit purpose of encouraging or “rewarding” conservation, such rates comply with Proposition 218 so long as adequate cost justification is given. (*Capistrano, supra*, 235 Cal.App.4th at p. 1511 [approving tiered rates “so long as . . . conservation is attained in a manner that ‘shall not exceed the proportional cost of the service attributable to the parcel.’ (Art. XIII D, § 6, subd. (b)(3).]”) (quoting *Palmdale, supra*, 198 Cal.App.4th at pp. 936–937.)

Conversely, uniform rates generally are less effective at allocating system costs proportionately based on cost of service. Unlike tiered rates, uniform rates do not proportionally allocate higher service expenses to the customers that drive costs. (See *Beecher et al., supra*, at p. 111.) When all customers pay the same price per hundred cubic feet of water, despite meaningful differences in the relative water use, these rates fail to accurately reflect the entire cost of service attributable to a parcel. Instead, when the system needs to invest in additional infrastructure and supplies to meet the marginal demands of the system's highest

users, that cost is equally (and unfairly) borne by all customers under uniform rates, regardless of whether the need for those investments can be attributed to a parcel's demands. For these reasons, not only do tiered rates comply with Proposition 218's proportionality requirement, but they are also the rate design best suited to allocating proportional costs of service among water users.

### **C. Tiered Rates Advance Equity and Affordability and Are Therefore Critical Tools for Meeting the State's Water Management Goals**

Properly designed tiered rates advance equity and affordability. They accomplish this by ensuring that users who consume the most water bear the proportional cost of the outsized strains they place on a water delivery system—rather than allowing those costs to fall on more modest users, who often have the least ability to afford those costs and bear little responsibility for them.<sup>19</sup>

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<sup>19</sup> Modest water users typically make up the majority of users, while above-average users comprise a small percentage. See, e.g., Williams, *LA's Mega Water Users Still Pumped Millions of Gallons Despite Drought* (Jan. 18, 2017) [Reveal News <https://revealnews.org/article/las-mega-water-users-still-pumped-millions-of-gallons-despite-drought/>](https://revealnews.org/article/las-mega-water-users-still-pumped-millions-of-gallons-despite-drought/); Spears, *Top Residential Water Users in Metro Las Vegas Revealed* (Aug. 19, 2022) [KTNV Las Vegas <https://www.ktnv.com/watersusersresidential>](https://www.ktnv.com/watersusersresidential); Huddleston, *Biggest Water Users Consume 10 to 20 times More Than Average Household* (Mar. 23, 2014) [ExpressNews <https://www.expressnews.com/news/environment/article/Biggest-water-users-consume-10-to-20-times-more-5341194.php>](https://www.expressnews.com/news/environment/article/Biggest-water-users-consume-10-to-20-times-more-5341194.php).



As water costs rise in California, it is increasingly important to ensure that rates are equitable and that small water users are not forced to bear costs properly assignable to the largest users. Water bills have been rising to keep pace with investment needs and have increased faster than incomes in California. (Public Policy Institute of California, *Paying for Water* (2016) p. 2.) “As this trend continues, customers below the median income will be disproportionately affected relative to customers with higher incomes. San Francisco, San Diego, and Santa Barbara [counties] have the largest increase in total bill as a percentage of median income.” (Gaur & Diagne, *supra*, at p. 51.) Because of this disproportionate impact of rising water rates, and California’s goal of safeguarding “safe, clean, affordable, and accessible water” for all residents, (Cal. Water Code § 106.3), water providers should consider equity when designing water rates.

Lower-income users generally consume less water than higher-income users. Previous research has established that a combination of factors, including demographics, climatic conditions, and socioeconomic factors, impact urban water use. (Stoker et al., *Building Water-Efficient Cities: A Comparative Analysis of How the Built Environment Influences Water Use in Four Western U.S. Cities* (2019) 85 J. of American Plan. Ass’n 511, 512.) In particular, design factors such as vegetated land cover, housing density, and lot size are strong determinants of

water use. (*Id.* at pp. 512-519.)<sup>20</sup> “A consistent finding across the literature is that houses on large lots use more water than do houses on smaller lots.” (*Id.* at p. 512.) This trend is likely associated with two factors. “First, a large lot size typically has a large irrigation area, thus increasing outdoor water use. Pools, spas, and other water features are also more common on larger lots, especially in warmer climate cities.” (*Id.*) Second, large lots are typically correlated with larger homes, which have more appliances, more bathrooms, guest homes, and more vegetated landscape requiring irrigation. (*Id.* at pp. 512-13.)<sup>21</sup>

Overall, “increases in vegetated cover, combined with larger lots, in newer homes with higher assessed values are

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<sup>20</sup> The authors of the study accessed water use records for single-family residential properties across four U.S. cities: Portland (OR), Phoenix (AZ), Salt Lake City (UT), and Austin (TX). These cities were selected because they each offer insights relative to the impacts of both climate change and rapid urban population growth on residential water consumption. The authors chose to study single-family residential properties because they have been the dominant form of residential development in each of these cities and constitute substantial shares of overall water use. These data represent more than 200,000 single-family residential properties, and according to the authors, the results should be generalizable to similar cities.

<sup>21</sup> Another closely related housing characteristic associated with residential water use is housing value. Although house values are strongly correlated with house size and location, other factors such as lot size and landscaping also influence house value, “with water use implications described above.” (Stoker et al., *supra*, at p. 513.) Several studies have also linked higher housing density to lower water use. (*Id.* at p. 520.) Researchers have proposed that smaller lots have smaller irrigable landscapes and therefore require less water to maintain. (*Id.* at p. 513.)

associated with higher water use.” (*Id.* at p. 517.) And in a fact sheet on factors that can affect per capita water use, the State Water Board shared, “Areas with higher incomes generally use more water than areas with low incomes. Larger landscaped residential lots that require more water are often associated with more affluent communities.” (Cal. State Water Res. Control Bd., *Factors That Can Affect Per Capita Water* (2015).) Los Angeles County also points out in its Sustainability Plan that low-income families are most burdened by costs even though “high-income families use proportionately more water[.]” ([Our County: Los Angeles Countywide Sustainability Plan](#), p. 128.) This pattern of overconsumption “affect[s] us all by exacerbating water scarcity.” (*Id.*)

Given that high-income households generally consume more water than low-income households, a rate structure that fails to proportionally allocate higher service expenses to higher consumptive users could result in subsidization of larger, high-income water users by smaller, low-income users. This is the exact type of cross-subsidization Proposition 218 was designed to prevent. Properly designed tiered rates, which track the marginal costs of water and allow agencies to charge class-specific costs of water provision at each usage level, “maximize consumer welfare” and “benefit lower-income users[.]” (Stone & Johnson, [Conserving for the Common Good: Preferences for Water Conservation Policies During a Severe Drought in Northern California](#) (2022) 37 *Water Res. and Econ.* 1, 3.)

Meanwhile, less than 20% of the state’s poorest residents currently receive benefits from a low-income water subsidy. (Gomberg et al., *supra*, at p. 8.) Although approximately 46% of Californians are served by a water system offering some type of rate assistance, most rate assistance programs have low levels of enrollment and limited financial resources. (*Id.* at p. 21.) Furthermore, Proposition 218’s requirement that fees must be specifically linked to the services for each property limits water utilities’ ability to provide “lifeline” discounts to low-income households, an important equity-oriented feature of most energy and telephone billing systems. (Hanak et al., *supra*, at p. 2.) For this reason, most existing rate assistance programs are funded by revenues derived from sources other than water rates and charges, which are generally insufficient to provide benefits to all eligible households. (Gomberg et al., *supra*, at p. 21.) Thus, rate assistance is ineffective at achieving equitable water rates that reflect the true cost of service for proportional water use among low-income and high-income water users.

Tiered rate structures, on the other hand, can help manage this problem and “meet the criteria for fairness:” they charge customers based on the amount of water consumed and ensure that all customers can afford water for basic needs. ([Water Rate Structures in Colorado: How Colorado Cities Compare in Using Important Water Use Efficiency Tool](#), Western Resource Advocates (2004) p. 6.) This design is inherently reasonable “because customers are charged according to the strain they impose on the utility’s water supply, which can eliminate the

subsidy to the high-volume users.” (*Id.*) Customers who use more water *should* pay higher rates per unit of water because the demands they place on the system create additional costs. Without tiered rates, paying for water will become even more challenging for low-income households in the future.

#### **D. Respondents’ Arguments About the City’s Tiered Rate Structure Are Misguided**

Respondents argue that, because the City uses tiered rates only for single-family customers and uniform rates for all other classes of customers, the City’s tiered rates are not cost-based and cannot be proportional to the cost of service. They claim that “the City could not justify disparate treatment of its single-family customers through any cost-based means,” (Respondents’ Brief, p. 24), and “[t]he City could have charged single-family customers, like all other customers, uniform rates for their water use.” (Respondents’ Brief, p. 67). However, nothing in Proposition 218 requires the City to use identical rate structures across customer classes. The City’s obligation is simply to ensure that all rate structures reasonably reflect the proportional cost of service attributable to each parcel—and agencies are afforded discretion to design rate structures within those bounds. (*Griffith II, supra*, 220 Cal.App.4th at p. 601; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 368.) Without foundation in either constitutional text or precedent, Respondents’ arguments twist Proposition 218 into a strict mandate to set identical rates across all customer classes.

Moreover, the proportional cost of service is not merely “the proportional cost associated with a particular unit of water flowing through the pipes[,]” as Respondents suggest (Respondents’ Opening Brief, p. 16). Instead, it represents *all* costs water suppliers incur in delivering the service. Water Code Section 371(d) defines “incremental costs” as “the costs of water service, including capital costs, that the [supplier] incurs directly, or by contract, as a result of the use of water in excess of the basic use allocation or to implement water conservation or demand management measures employed to increase efficient uses of water, and further discourage the wasteful or unreasonable use of water.” (Cal. Water Code § 371(d).) These incremental costs may include, among others, “conservation best management practices,” water system retrofitting and other infrastructure costs “for production, distribution, and all uses of...alternative water supplies[,]” and procuring new water supplies or energy costs associated with delivering water to any particular property. (*Id.*)

Thus, essentially everything that drives the costs water suppliers actually incur counts as cost of service. Agencies’ rate structures are not solely based on immediate operation, maintenance, and delivery costs, but also on the cost of upsizing infrastructure, purchasing water, and even implementing conservation management measures to stretch water supplies.

#### **IV. THE TRIAL COURT MISAPPLIED PROPOSITION 218 BY IMPOSING AN INFEASIBLY HIGH BURDEN ON WATER PROVIDERS DEFENDING TIERED RATE STRUCTURES**

Upholding the trial court’s decision would impose an infeasibly and unlawfully high burden on water providers defending tiered rates—a burden so high that it would, as a practical matter, radically shrink the availability of tiered rates. This would undercut widespread water rate design practices throughout California that support the state’s conservation and equity goals. All of this would be inconsistent with both the goals and strictures of Proposition 218.

In invalidating the City’s tiered water rates for the single family residential (SFR) customer class, the lower court misunderstood and misapplied Proposition 218 by applying an overly onerous standard of proof when evaluating the quantity and quality of the City’s evidence. The trial court required much more from the City than a showing by a preponderance of the evidence that its tiered rates “reasonably” reflect the cost to deliver water service at the consumption level represented by each tier, which is all the law requires. In all California civil cases, the default standard of proof is preponderance of the evidence. (Cal. Evid. Code § 115.) “Proposition 218 clearly defines when it imposes a heightened standard of proof on the government[,] and it does not do so for a claim alleging a violation of Section 6(b)(3).” (Appellant’s Reply Brief, p. 28 (citing Cal. Const. art. XIII D, § 4(a) [applying the clear and convincing evidentiary standard in the narrow circumstance where a local

government exempts public property from an assessment]).) Thus, the default preponderance of the evidence standard applies to Section 6(b)(3) claims.

In cases alleging a Section 6(b)(3) violation, courts make a reasonableness analysis when applying the preponderance of the evidence evidentiary standard. (See, e.g., *KCSFV I LLC v. Florin Cnty. Water Dist.* (2021) 64 Cal.App.5th 1015, 1030 [a fee or charge “must reasonably represent[] the cost of providing service”]; *Morgan, supra*, 223 Cal.App.4th at p. 918 [requiring reasonably accurate evidence]; *Moore*, 237 Cal.App.4th at pp. 368, 373-74.) Under this caselaw, the City meets its burden of proof if it presents evidence “that the City reasonably allocated the costs of service to each tier and then calculated tiered rates that reasonably reflect the City’s cost of providing water service to customers consuming water at each tier.” (Appellant’s Opening Brief, p. 66.)

But the lower court here required far more—namely, granular (and nonexistent) customer-by-customer and hour-by-hour data—to support every City calculation, assumption, and ratesetting decision (*Patz et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2015-00023413-CU-MC-CTL (2021) pp. 2:22-24, 3:7-14, 4:1-12, 14:6-14, 18:16-18, 19:15-26, 22:28-23:14) [demanding real-time customer data on hour-by-hour usage to justify rates when this data was technologically unavailable to the City at the time of the ratesettings].) If this Court upholds the need for agencies to present granular customer-by-customer data when justifying tiered rates, there is



no rationale for not *also* mandating this level of evidentiary support for uniform rates. To do so otherwise would needlessly privilege uniform rates when, as discussed above, uniform rates are less effective at allocating system costs proportionately based on cost of service than tiered rates. Very few agencies have the capability to defend any type of rate—tiered or uniform—with the level of specificity required by the lower court, making the evidentiary standard untenable.

More importantly, the trial court’s demands exceed the requirements imposed by *Capistrano*. According to the trial court, the City’s ratemaking methodology bore a “striking resemblance” to the one invalidated in *Capistrano*. (*Patz et al. v. City of San Diego*, San Diego Superior Court, *supra*, at p. 2:9.) But the Court of Appeal’s rationale for invalidating the agency’s tiered rates in *Capistrano* was not the agency’s failure to base its methodology on actual customer data, but rather its arbitrary drawing of tiers. According to the *Capistrano* court, the agency “did not try to calculate the cost of actually providing water at its various tier levels. It merely allocated all its costs among the price tier levels, based not on costs, but on predetermined usage budgets.” *Capistrano, supra*, 235 Cal.App.4th at p. 1498.

In contrast, the City here *did* calculate the cost of water provision at its various tier levels, using reasonable proxy data and assumptions (rather than customer-specific data). Agencies should be allowed to employ proxy data, assumptions, estimates, and other traditional tools of economic analysis when setting

water rates, as permitted in the *Griffith II* line of cases.<sup>22</sup> (See, e.g., *Morgan*, 223 Cal.App.4th at 900, 918 [approving of the use of averages and estimates in allocating costs when the agency “did not have clear measurement data” because “section 6 does not require perfection”]; *Moore*, 237 Cal.App.4th at 371 [accepting the agency’s use of accounting, estimates, and calculations because they served as “a good indicator” of how costs should be allocated].) Thus, the trial court surpassed the holding in *Capistrano* by not only requiring reasonable methods of calculation and correlation, but also requiring (nonexistent) parcel-by-parcel data to substantiate that correlation.

Several California Courts of Appeal have defined the standard of proof that the City must meet here as reasonableness. (*Griffith II, supra*, 220 Cal.App.4th at p. 601 [upheld agency’s water pricing method because it was “a reasonable way to apportion the cost of service”]; *Morgan*, 223 Cal.App.4th at 916, 918 [held that the water agency met its burden of proof because its estimates were “reasonably accurate” and “reasonably dependable and adequate”]; *Capistrano, supra*, 235 Cal.App.4th at p. 1499 n.6 [“tiered rate structures and Proposition 218 are thoroughly compatible ‘so long as’...those rates reasonably reflect the cost of service attributable to each parcel”]; *Moore*, 237 Cal.App.4th at 368 [upheld the city’s method of cost allocation because “courts afford agencies a reasonable

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<sup>22</sup> *Griffith II, supra*, 220 Cal.App.4th; *Morgan, supra*, 223 Cal.App.4th 892; *Capistrano, supra*, 235 Cal.App.4th 1493; *Moore, supra*, 237 Cal.App.4th 363; *KCSFVI, LLC, supra*, 64 Cal.App.5th 1015.

degree of flexibility” in apportioning costs under Section 6(b)(3)]; *KCSFV, supra*, 64 Cal.App.5th at p. 1030 [rejecting agency’s rate increase because it failed to “reasonably represent[] the cost of providing service to the affected properties”].) By disregarding the reasonableness component of the standard of proof established in the *Griffith II* line of cases, the trial court required the City to present a higher degree of evidence to demonstrate compliance with Article XIII D, Section 6(b)(3) than has ever been required in a case alleging a violation of the provision.

The reasonableness standard is the only practical way for agencies to defend not only tiered rates, but *all* water rates, without constant fear of legal challenge. Many water agencies, including the City of San Diego, lack particularized volumetric data for customers broken down by tier, making it impossible for ratesetting agencies to offer the granular customer-by-customer data demanded by the trial court.<sup>23</sup> Courts have upheld tiered rates designed without such particularized data. (*Moore, supra*, 237 Cal.App.4th at p. 368; *Morgan, supra*, 223 Cal.App.4th at pp. 900, 916, 918.) In current and future ratesetting contexts, water

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<sup>23</sup> Smart meter programs that measure hour-by-hour data “consist of first generation automatic meter reading (AMR), which merely transmit usage data to the utility, and newer advanced metering infrastructure (AMI), which offer two-way data communication that can enable numerous services through the meter (*e.g.*, demand response, variable pricing, etc.)” (Patel & Haji, Cleantech Group, LLC, [Trends in the U.S. Water Market Shaping Innovation](#) (2018) p. 9.) In 2018, only 7% of water utilities in the U.S. had implemented such a smart meter program, with an additional 7% of water utilities pursuing pilot phases. (*Id.* at p. 57.)

agencies likely will not be able to achieve the trial court's and Respondents' expected degree of granularity and precision and will be vulnerable in future proceedings if this Court were to affirm the trial court's decision. Greater legal scrutiny "will prevent local water managers from continuing to pursue the modern, portfolio-based approaches that have been so essential to allowing the state's population and economy to grow and prosper despite growing water scarcity." (Hanak et al., *supra*, at p. 29.)

If Proposition 218 is interpreted to require "molecular-level accounting of the costs and location of each drop of water," it will undermine the ability to manage California's increasingly sophisticated water system and provide reliable service despite increasing water scarcity. (*Id.* at p. 32.) Balancing costs among water users is a complex, "inherent governmental function, not subject to simple accounting solutions." (*Id.*) "Water agencies should be required to establish a transparent and understandable record of decisions, but not held to unreasonable standards of precision regarding the allocation of costs to individual parcels[.]" (*Id.* at p. 31.) Upholding the trial court's decision would impose an impractically high burden on water providers and effectively undermine currently pervasive water rate design practices throughout the state.

An interpretation of Proposition 218 that fails to meaningfully recognize that tiered rates properly reflect cost of service, and that places an impracticably high burden on water districts to defend such rates from challenge, will chill agencies' use of tiered rates due to fear of litigation. The rates that take

their place will likely fail to reflect the true value of water, will compel utilities to invest more in costly infrastructure and water supplies, and will exacerbate affordability challenges for low-income customers.

## V. CONCLUSION

For the foregoing reasons, *amici* urge this Court to reverse the judgment below.

Dated: May 19, 2023

By:

/s/ Heather Dadashi

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## CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 8,482 words using 13-point Century Schoolbook font, including footnotes, which is less than the total words permitted by the California Rules of Court. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By:           /s/ Heather Dadashi            
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## DECLARATION OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is 405 Hilgard Avenue, Los Angeles, California 90095. My electronic service address is [dadashi.elc@law.ucla.edu](mailto:dadashi.elc@law.ucla.edu). On May 19, 2023, I served the within documents:

### APPLICATION OF CALIFORNIA COASTKEEPER ALLIANCE AND LOS ANGELES WATERKEEPER FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANT AND CROSS-RESPONDENT

### PROPOSED *AMICI CURIAE* BRIEF OF CALIFORNIA COASTKEEPER ALLIANCE AND LOS ANGELES WATERKEEPER IN SUPPORT OF APPELLANT AND CROSS-RESPONDENT

- VIA UNITED STATES MAIL.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.
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- VIA ELECTRONIC SERVICE THROUGH TRUEFILING.** Based on a court order or an agreement of the parties to accept service by electronic transmission through TrueFiling, I caused the above-referenced document(s) to be sent to the person(s) at the electronic address(es) listed below.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare

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

Executed on May 19, 2023, at Los Angeles, California.

/s/ Heather Dadashi

Heather Dadashi



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***Daniel Patz, Joan Mann Chesner et al. v. City of San Diego***

**Case No. D080308**

California Court of Appeal, Fourth District

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