

420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Voice (530) 432-7357  
Fax (530) 432-7356

**COLANTUONO**  
**HIGSMITH**  
**WHATLEY, PC**

Michael G. Colantuono  
(530) 432-7359  
MColantuono@chlaw.us

May 14, 2018

Our File No. 48011.0003  
**SUPREME COURT**  
**FILED**

MAY 15 2018

Chief Justice Tani Cantil-Sakauye and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, California 91402-4797

Jorge Navarrete Clerk

Deputy

Re: ***Citizens for Fair REU Rates v. City of Redding*** (Case No. S224779):  
**Notice of New Authorities**

Honorable Chief Justice and Associate Justices:

I represent Respondent City of Redding ("City") in the above-captioned matter set for argument on May 30, 2018. I write under California Rules of Court, rule 8.520(d), to inform the Court of three new authorities not available to be included in the City's merits briefs: *Northern California Water Association v. State Water Resources Control Board* (2018) 20 Cal.App.5th 1204 (NCWA); *California Building Industry Association v. State Water Resources Control Board* (May 7, 2018, S226753) \_\_ Cal.5th \_\_ [2018 WL 2090997] (CBIA); and *Webb v. City of Riverside* (ordered published May 11, 2018, D073449) \_\_ Cal.App.5th \_\_ [2018 WL 2182638] (*Webb*).

NCWA was a challenge to regulatory fees under Proposition 13, article XIII A of the California Constitution. (*NCWA, supra*, 20 Cal.App.5th at p. 1218.) It concludes the fees are not made taxes by the fact that some beneficiaries of the fee program are exempt from the fee due to federal sovereign immunity. Because the Water Resources Board had non-fee revenue sufficient to cover the share of regulatory costs associated with those users, the Court of Appeal found the fee to be a valid regulatory fee and not a tax requiring two-thirds approval of the Legislature under Proposition 13. It is relevant to the following points discussed in the City's Opening Brief on the Merits:

- pages 34–35, arguing Redding's payment in lieu of taxes (PILOT) does not exceed the cost of service;
- pages 35–39, 41, arguing the PILOT is funded from non-rate revenues;

NCWA is also relevant to this portion of the City's Reply Brief on the Merits:

- pages 13–20, arguing the PILOT does not exceed the cost of service.

And, NCWA is relevant to these pages of the City's Answer to the Amicus Briefs:

- pages 13–15, arguing the PILOT is funded from non-rate revenues.

CBIA was a challenge to waste discharge permit fees under Propositions 13 and 26, article XIII A of the California Constitution. (CBIA, Slip Op. at pp. 13–24.) CBIA is therefore relevant to the points discussed in the City's Opening Brief at:

- pages 28 to 34, on the definition of "tax" under Proposition 26 and the party bearing the burden in rate challenges, and
- pages 39 to 48, on reasonable costs of service under Propositions 13 and 26.

CBIA is also relevant to these points the City raises in its Reply Brief at:

- pages 13 to 20 on rate-making under Proposition 26, and
- pages 22 to 24 on reasonable apportionment of costs under Proposition 13.

Webb considered an adjustment to a city's calculation of a transfer from its electric utility to its general fund, which the petitioner alleged to violate Propositions 26 and 218 (Cal. Const., art. XIII C) as a tax increased without voter approval. (Webb, Slip Op. at pp. 18–22.) Webb is relevant to the points discussed in the City's Opening Brief at:

- pages 48 to 55, on the imposition, extension, or increase of a tax.

Webb is also relevant to a point discussed in the City's Reply Brief at:

- pages 20 to 22, on whether a transfer from a utility to a general fund is necessarily a tax under Proposition 26.

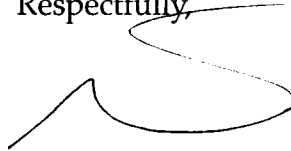
Chief Justice Tani Cantil-Sakauye

May 14, 2018

Page 3

If the Court would prefer a fuller, supplemental brief on these authorities, the City will be happy to provide it on the Court's request.

Respectfully,

A handwritten signature in black ink, appearing to be 'MGC', with a large, stylized flourish extending to the right.

Michael G. Colantuono

State Bar No. 143551

MGC:lw

Enclosure: Proof of Service

**PROOF OF SERVICE**

*Citizens for Fair REU Rates v. City Of Redding*

California Supreme Court Case No. S224779

Third District Court of Appeal Case No. C071906

Shasta County Superior Court Case No. 171377 (Consol. with Case No. 172960)

I, Ashley A. Lloyd, declare:

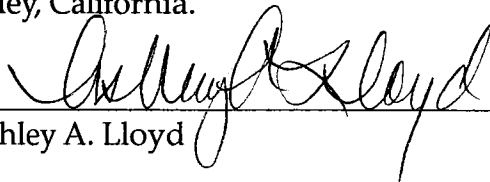
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. On May 14, 2018 I served the document(s) described as **NOTICE OF NEW AUTHORITY** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED LIST**

   **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 May 14, 2018 at Grass Valley, California.

  
\_\_\_\_\_  
Ashley A. Lloyd

## SERVICE LIST

*Citizens for Fair REU Rates v. City of Redding*  
California Supreme Court Case No. S224779  
Third District Court of Appeal Case No. C071906  
Shasta County Superior Court Case No. 171377 (Consol. with Case No. 172960)

William P. McNeill  
McNeill Law Offices  
280 Hemsted Drive, Suite E  
Redding, CA 96002  
Telephone: (530) 222-8992  
Facsimile: (530) 222-8892  
Email: waltmcn@aol.com  
*Attorneys for Plaintiff and Appellant Citizens  
for Fair REU Rates*

Barry DeWalt, City Attorney  
City Of Redding  
777 Cypress Avenue  
P.O. Box 49601  
Redding, CA 96099  
Telephone: (530) 225-4050  
Facsimile: (530) 225-4362  
Email: bdewalt@ci.redding.ca.us  
*Attorneys for Defendant and Respondent  
City of Redding*

Rick W. Jarvis  
Jarvis Fay Doporto & Gibson  
492 9th Street, Suite 310  
Oakland, CA 94607  
*Attorneys for League of California Cities,  
Pub/Depublication Requestor*

Daniel E. Griffiths  
Braun Blaising McLaughlin &  
Smith, PC  
915 L Street, Suite 1480  
Sacramento, CA 95814-3765  
*Attorneys for California Municipal Utilities  
Association, Pub/Depublication Requestor*

James R. Cogdill  
Howard Jarvis Taxpayers Association  
921 11<sup>th</sup> Street, Suite 1201  
Sacramento, CA 95814  
*Attorneys for Howard Jarvis Taxpayers  
Association, Pub/Depublication Requestor*

Clerk of the Court  
Shasta County Superior Court  
1500 Court Street  
Redding, CA 96001-1686

Court of Appeal  
Third Appellate District  
914 Capitol Mall  
Sacramento, CA 95814