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No. F088720

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

KINGS COUNTY FARM BUREAU, ET AL.,
Plaintiffs and Respondents,

v.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD,
Defendant and Appellant.

Superior Court of California, County of Kings, Case No. 24CU0198
The Honorable Katherine A. Ciuffini • Dept. 5 • Tel. No. (559) 582-1010

APPELLANT'S ANSWER TO THE AMICUS BRIEF OF THE CITY OF LEMOORE

(*Related Petition for Writ of Mandate Pending: No. F088909*)

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June 5, 2025

TABLE OF CONTENTS

Page

Introduction....5
Discussion....5
I. The City's arguments and requested relief are beyond the scope of this appeal....5
II. The City's legal reasoning is flawed....7
A. SGMA's state intervention fees are not subject to Proposition 218....7
B. Regulatory compliance costs do not constitute an unfunded mandate....8
Conclusion....9
Certificate of compliance....10

June 5, 2025

TABLE OF AUTHORITIES

Page

CASES

Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles
(2001) 24 Cal.4th 830 8

Bruno v. Super. Ct.
(1990) 219 Cal.App.3d 1359 6

California Assn. for Safety Education v. Brown
(1994) 30 Cal.App.4th 1264 6

Great Western Sav. & Loan Assn. v. City of Los Angeles
(1973) 31 Cal.App.3d 403 6

Kendall v. Barker
(1988) 197 Cal.App.3d 619 6

Knapp v. City of Newport Beach
(1960) 186 Cal.App.2d 669 6

Pratt v. Coast Trucking, Inc.
(1964) 228 Cal.App.2d 139 6

Tri-County Special Educ. Local Plan Area v. County of Tuolumne
(2004) 123 Cal.App.4th 563 9

ViaView, Inc. v. Retzlaff
(2016) 1 Cal.App.5th 198 6

Younger v. State of California
(1982) 137 Cal.App.3d 806 6

STATUTES

California Code of Regulations, title 23, § 1040 8

Sustainable Groundwater Management Act (SGMA) ..... *passim*

June 5, 2025

Water Code § 1529.5 ..... 7, 8

CONSTITUTIONAL PROVISIONS

California Constitution, article XIII A, § 3.....8

Proposition 218 ..... 5, 7, 8

OTHER AUTHORITIES

9 Witkin, Cal. Procedure (6th ed. 2025) Appeal, § 354.....6

INTRODUCTION

On September 12, 2024, the trial court issued an injunction suspending the State Water Resources Control Board's (Board) implementation of the Sustainable Groundwater Management Act (SGMA) in the Tulare Lake Subbasin (Subbasin). The Board appealed the injunction as improper on several bases.

The City of Lemoore (City), a municipal water provider in the Subbasin, filed an amicus brief in support of Plaintiffs, Kings County Farm Bureau and two private landowners, asking this Court to rule that various fees imposed on the City are constitutionally improper or illegal and to affirm the trial court's injunction. The City's briefing goes beyond the scope of the Board's appeal, is unsupported by the record, and relies on flawed legal analysis. Therefore, this Court should disregard the City's arguments and deny the relief it requests.

DISCUSSION

I. THE CITY'S ARGUMENTS AND REQUESTED RELIEF ARE BEYOND THE SCOPE OF THIS APPEAL

On May 22, 2025, the Court granted the City leave to file, and the City filed, an amicus brief relating to its position as a municipal water supplier in the Subbasin. (11 AA 1433–1434 [the City is one of several Subbasin communities whose water systems rely on groundwater].) The City claims that the Board is imposing "extraction fees and well mitigation fees" on the City, in violation of Proposition 218 and the constitutional prohibition on unfunded mandates. (Amicus Br. at pp. 6–7.) The City asks this Court to affirm the trial court's injunction and to rule that the alleged fees are improper. (*Id.* at p. 7.)

This Court should refuse to consider the arguments raised by the City because "those arguments [were] not presented in the trial court, and [were] not urged by the parties on appeal." (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1275.) "Amicus curiae may not 'launch out upon a juridical expedition of its own unrelated to the actual appellate record.'" (*Id.* at p. 1274, quoting *Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143.) Neither Plaintiffs nor the Board presented the arguments raised by the City in the trial court or in any appellate filing before this Court. Therefore, the City's arguments are not appropriate for consideration. (*Younger v. State of California* (1982) 137 Cal.App.3d 806, 813 [it is "universally recognized that an appellate court will consider only those questions properly raised by the appealing parties"]; see also *Bruno v. Super. Ct.* (1990) 219 Cal.App.3d 1359, 1364–1365; *Great Western Sav. & Loan Assn. v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413, fn. 14.)

The City's arguments "are outside the scope of review" for the additional, independent reason that they are unsupported by the record. (9 Witkin, Cal. Procedure (6th ed. 2025) Appeal, § 354; see also *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625, quoting *Knapp v. City of Newport Beach* (1960) 186 Cal.App.2d 669, 679; *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209.) For example, the City's claim that the Board is imposing "well mitigation fees" pursuant to SGMA is unsupported. (Amicus Br. at pp. 6, 7.) Additionally, the City claims, without support, that the "basis for the extraction fee and

for the amount thereof is unknown." (*Id*. at p. 7.) Both Plaintiffs and the Board acknowledge that Water Code section 1529.5 is the basis for fees imposed in basins where the Board has intervened under SGMA, i.e., state intervention fees. (E.g., AOB at p. 63; Resp. Br. at pp. 32–34; Appellant's Reply Br. at pp. 13, 19.) The basis for these fees is also reflected in the record. (E.g., 1 AA 120.) Finally, the record contradicts the City's assertion that the Subbasin is "a source of groundwater providing sufficient water supplies to users." (Amicus Br. at p. 6; see 11 AA 1433–1435 [four community water systems, including the City's, are failing].) Therefore, this Court should decline to consider the City's arguments as beyond the scope of review.

II. THE CITY'S LEGAL REASONING IS FLAWED

In addition to being beyond the scope of review, the City's arguments fail as a matter of law.

A. SGMA's state intervention fees are not subject to Proposition 218

The City's argument that SGMA's state intervention fees are improper rests on the flawed premise that the fees are subject to Proposition 218. (Amicus Br. at p. 6 [arguing that the "fees are not allowable cost of providing water service under Prop. 218"].) This argument conflates two distinct types of fees: property-related water service charges imposed by the City on customers and regulatory fees imposed by the state.[1] The City concedes its "water rates" are property-related fees. (*Id.* at p. 5.) And it is

[1] As noted above, there is no evidence that the state is imposing "well mitigation fees" under SGMA.

undisputed that state intervention fees are regulatory. (Resp. Br. at pp. 32, 34; Amicus Br. at p. 6.)[2]

Unlike property-related fees, the regulatory fees at issue are not subject to Proposition 218 because they are not "imposed directly on property owners in their capacity as such." (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 838 [the regulatory fee depends on groundwater extraction, "whether or not ownership remains in the same hands"].) Rather, in setting the state intervention fees, SGMA requires the Board to comply with section 3 of article XIII A of the California Constitution. (§ 1529.5, subd. (c) ["Consistent with Section 3 of Article XIII A of the California Constitution, the board shall set the fees under this section in an amount sufficient to cover all costs incurred and expended from the Water Rights Fund"].) Therefore, SGMA's state intervention fees are not subject to Proposition 218.

B. Regulatory compliance costs do not constitute an unfunded mandate

The City incorrectly asserts that if it is unable to pass the cost of SGMA's state intervention fees on to its water customers, those regulatory costs "would amount to an illegal unfunded mandate." (Amicus Br. at p. 7.) The City cites no legal authority for this argument and ignores the correct definition of an unfunded mandate. An unfunded mandate occurs if the Legislature or a court determines that the state imposed "a new

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[2] The City refers to this as the "extraction fee," however there is a per-well fee in addition to the volumetric pumping fee. (Cal Code Regs., tit. 23, § 1040.)

program or a higher level of service" on a local government without corresponding funding. (*Tri-County Special Educ. Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 571–573.) The City's argument is premised on new regulatory costs associated with the state intervention under SGMA, not a new program or higher level of service. Therefore, in addition to being outside the scope of review, the City's position does not square with the law.

CONCLUSION

Because the City's arguments are beyond the scope of the appeal and based on flawed legal reasoning, the Board respectfully requests this Court deny the City's requested relief.

Respectfully submitted,

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June 5, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached Appellant's Answer to the Amicus Brief of the City of Lemoore uses a 13-point Century Schoolbook font and contains 1,159 words.

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MARGARET V. TIDES
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State Water Resources Control Board

June 5, 2025

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY OVERNIGHT COURIER

Case Name: **Kings County Farm Bureau, et al. v CA State Water Board, et al.**
No.: **F088720**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the General Logistics Systems Overnight Courier Service.

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 5, 2025, at San Francisco, California.

C. Murphy	C. Murphy
Declarant	Signature

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Case Number: **F088720**
Lower Court Case Number: **24CU0198**

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6/5/2025

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/s/Classiemarie Murphy

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