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EL DORADO CO. SUPERIOR COURT
BY *Wendy Marden*

(DEPUTY CLERK)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF EL DORADO

**Georgetown Divide Taxpayers
Association, Steven Proe, and
Michele Turney, on behalf of
themselves, and all others similarly
situated,**

Petitioners/Plaintiffs,

v.

**Georgetown Divide Public Utility
District and Does 1 to 20,**

Respondents/Defendants.

Case No. PC20180211

**Proposed Statement of
Decision**

(Code of Civ. Proc. § 632; Cal. Rules
of Ct., Rule 3.1590)

Pursuant to California Rules of Court, rule 3.1590, the court renders its Proposed Statement of Decision. Any party may file and serve a proposal or objection to its contents within the time limits specified by applicable rule. If no party does so, this document shall, without the necessity of another court order, automatically become the court's Statement of Decision. To the extent any of the parties avail themselves of the right to propose or object, the court reminds the parties that a Statement of Decision need not discuss each point listed in a party's request; it need only set forth ultimate facts as opposed to evidentiary

1 facts on the principal controverted issues requested. (*Marriage of Garrity &*
2 *Bishton* (1986) 181 Cal.App.3rd 675, 687 [226 Cal.Rptr. 485].)

3 **INTRODUCTION**

4 Petitioners/plaintiffs Georgetown Divide Taxpayers Association, Steven
5 Proe, and Michele Turney, on behalf of themselves and all others similarly
6 situated, filed this action for a writ of mandate, declaratory relief, an injunction,
7 and refund of illegal tax against respondent/defendant Georgetown Divide Public
8 Utility District (“District”).¹ Petitioners ask the court to declare that rates and
9 charges that went into effect January 1, 2018, are invalid pursuant to
10 Proposition 218.

11 The matter came on regularly for hearing on October 11, 2019, before the
12 Honorable Michael J. McLaughlin, Judge of the Superior Court. Marsha Burch
13 appeared on behalf of petitioners, and Robin Baral and Barbara Brenner
14 appeared on behalf of respondent. The administrative record having been lodged
15 with the court, the parties’ briefs having been filed and argument had, the
16 matter was then submitted for decision by the court.

17 **1. THE PARTIES**

18 Georgetown Divide Taxpayers Association is an unincorporated, informal
19 organization. The Association states that it was “established to promote
20 responsible taxation and governmental action within the District.” (Ver. Pet.
21 at 3:9–11.)

22 Individuals Steven Proe and Michele Turney are ratepayers within the
23 boundaries of the District. (*Id.* at 3:18–23.)

24 The District is a public utility district established under the Public Utility
25 Act, Public Utilities Code §§ 15501–15533. (Ver. Resp. at 4:11–13.)

26
27
28 ¹ Per stipulation, petitioners’ causes of action for injunctive relief and refund of
illegal tax will be the subject of a later litigation phase.

1 **2. BACKGROUND**

2 Georgetown is a community of about 2,300 residents in an unincorporated
3 area of El Dorado County. (Administrative Record (“AR”) 16.) The town is
4 registered as California Historical Landmark #484. (*Ibid.*) The median
5 household income for the District’s service area is approximately \$66,359,
6 although the budget calculations in the District’s rate study indicate the median
7 is \$46,700. (AR 16, 38.)

8 The District was formed in 1946. (*Ibid.*) Following the decline in gold
9 production, agriculture and lumbering became the primary industries on the
10 Georgetown Divide for many years. (*Ibid.*) In recent decades, vineyards have
11 increased the demand for irrigation water. (*Ibid.*) Stumpy Meadows Reservoir, a
12 20,000 acre-foot impoundment on Pilot Creek, is the core of the District’s water
13 supply system. (AR 17.) The District provides treated water, irrigation water,
14 and sewer services to the community known as the Georgetown Divide, in the
15 northwest portion of the county. (*Ibid.*) But, not all three services are provided in
16 all areas. (*Ibid.*)

17 The District has an elected five-member Board which meets monthly and
18 oversees a General Manager. (*Ibid.*) The Board sets policy but does not actively
19 participate in the management of the District. (*Ibid.*) There are 3,774 treated
20 water customers and 408 irrigation water customers. (*Ibid.*) The treated water
21 customers are billed bimonthly and pay a monthly base charge—which is
22 determined from the size of the customer’s water meter—and a usage charge—
23 which is based on the amount of water the customer uses. (*Ibid.*) Treated water
24 customers also pay a monthly supplemental charge for the Auburn Lake Trails
25 Water Treatment Plant (“ALT Plant”). (AR 2.) Irrigation water customers pay a
26 monthly base charge, based on one miner’s inch of water, during the five-month
27 irrigation season. (AR 18, 64.) Rates for irrigation water customers are

1 supplemented, i.e., reduced, by a portion of the ad valorem property taxes
2 received by the District. (AR 1281.)

3 Prior to the rate study in dispute, the District last updated its rates in 2008.
4 (AR 8, 17.) That update included a five-year schedule of proposed rates for 2009–
5 2013. (AR 8.) The District adopted rate increases for 2009–2011, but not for 2012
6 or 2013. (*Ibid.*)

7 In September 2016 the District initiated the process of enlisting the Rural
8 Community Assistance Corporation (“RCAC”) to conduct an updated rate study.
9 (AR 270.) RCAC receives state funding to help rural communities like the
10 District stay in compliance with applicable laws and regulations. (AR 8.) RCAC’s
11 services are provided at no cost to the District. (AR 18.)

12 Multiple Board meetings and public workshops took place over the
13 following year. (AR 4, 9, 977, 1193–1194, 1478.) Additionally, in May 2017 the
14 Grand Jury released a report concerning the District and made five
15 recommendations. (AR 590–591.) The District responded in June 2017 to the
16 Grand Jury’s report. (AR 602–604.)

17 In October 2017 the Board adopted District Resolution No. 2017-27
18 authorizing the District’s General Manager to prepare and mail notice of a
19 public hearing to consider rate increases for all treated water and irrigation
20 water customers. (AR 1340, 1344.) On October 26, 2017, the District delivered
21 notice of the Proposition 218 public hearing via mail to all its water customers.
22 (AR 10, 65.) The notice was mailed more than 45 days prior to the December 12,
23 2017, public hearing. (AR 10.)

24 On December 12, 2017, the District held the Proposition 218 public hearing.
25 (AR 70.) At the conclusion of the public hearing, the Board determined that the
26 protest was not successful. (AR 73.) The Board unanimously adopted District
27 Resolution No. 2017-29, to accept and close the Proposition 218 hearing, and
28 then the Board adopted District Resolution No. 2017-30 establishing new water

1 rates, effective January 1, 2018. (AR 73–74.) This Resolution adopted an
2 amended version of RCAC’s recommended rate structure. (AR 1–2.)

3 **3. LEGAL PRINCIPLES**

4 The California Constitution, as amended by a series of voter initiatives,
5 limits the authority of state and local governments to collect revenue. (Cal.
6 Const., arts. XIII A, XIII C, XIII D.) Article XIII D, added by Proposition 218 in
7 1996, applies to charges for specific services imposed “as an incident of property
8 ownership,” including a “charge for a property related service.” (Cal. Const.,
9 art. XIII D, § 2, subs. (e), (h).) Proposition 218 added to Proposition 13’s limits
10 on property taxes by placing similar restrictions on assessments, charges, and
11 fees imposed on taxpayers by local governmental entities. (*Howard Jarvis*
12 *Taxpayers Ass’n v. City of Riverside* (1999) 73 Cal.App.4th 679, 681–683 [86
13 Cal.Rptr.2d 592].)

14 Article XIII D of the California Constitution contains the following
15 definitions:

16 “(e) ‘Fee’ or ‘charge’ means any levy other than an ad valorem tax, a special
17 tax, or an assessment, imposed by an agency upon a parcel or upon a person as
18 an incident of property ownership, including a user fee or charge for a property
19 related service. [¶] ... [¶]

20 “(g) ‘Property ownership’ shall be deemed to include tenancies of real
21 property where tenants are directly liable to pay the assessment, fee, or charge
22 in question.

23 “(h) ‘Property-related service’ means a public service having a direct
24 relationship to property ownership.” (*Id.* § 2.)

25 The parties in this case do not dispute that the rates at issue are for a
26 property-related service. (*See Bighorn-Desert View Water Agency v. Verjil* (2006)
27 39 Cal.4th 205, 216 [46 Cal.Rptr.3d 73]; *Richmond v. Shasta Cmty. Services Dist.*
28 (2004) 32 Cal.4th 409, 426–427 [9 Cal.Rptr.3d 121].)

1 There are two types of restrictions on a local governmental entity's power to
2 increase property-related charges: (1) a set of procedural requirements, including
3 the requirement that owners, including tenants directly liable for the charges, be
4 given notice, a hearing, and an opportunity to defeat the increase by submitting
5 protests; and (2) a set of substantive requirements that regulate the use of the
6 funds collected and the distribution of the burden.

7 First, with regard to procedural requirements:

8 "Procedures for New or Increased Fees and Charges. An agency shall follow
9 the procedures pursuant to this section in imposing or increasing any fee or
10 charge as defined pursuant to this article, including, but not limited to, the
11 following:

12 “(1) The parcels upon which a fee or charge is proposed for imposition shall
13 be identified. The amount of the fee or charge proposed to be imposed upon each
14 parcel shall be calculated. The agency shall provide written notice by mail of the
15 proposed fee or charge to the record owner of each identified parcel upon which
16 the fee or charge is proposed for imposition, the amount of the fee or charge
17 proposed to be imposed upon each, the basis upon which the amount of the
18 proposed fee or charge was calculated, the reason for the fee or charge, together
19 with the date, time, and location of a public hearing on the proposed fee or
20 charge.

21 “(2) The agency shall conduct a public hearing upon the proposed fee or
22 charge not less than 45 days after mailing the notice of the proposed fee or
23 charge to the record owners of each identified parcel upon which the fee or
24 charge is proposed for imposition. At the public hearing, the agency shall
25 consider all protests against the proposed fee or charge. If written protests
26 against the proposed fee or charge are presented by a majority of owners of the
27 identified parcels, the agency shall not impose the fee or charge.” (Cal. Const.,
28 art. XIIIID, § 6, subd. (a).)

1 And second, with regard to substantive requirements:

2 “Requirements for Existing, New or Increased Fees and Charges. A fee or
3 charge shall not be extended, imposed, or increased by any agency unless it
4 meets all of the following requirements:

5 “(1) Revenues derived from the fee or charge shall not exceed the funds
6 required to provide the property related service.

7 “(2) Revenues derived from the fee or charge shall not be used for any
8 purpose other than that for which the fee or charge was imposed.

9 “(3) The amount of a fee or charge imposed upon any parcel or person as an
10 incident of property ownership shall not exceed the proportional cost of the
11 service attributable to the parcel.

12 “(4) No fee or charge may be imposed for a service unless that service is
13 actually used by, or immediately available to, the owner of the property in
14 question. Fees or charges based on potential or future use of a service are not
15 permitted. Standby charges, whether characterized as charges or assessments,
16 shall be classified as assessments and shall not be imposed without compliance
17 with Section 4.” (*Id.*, art. XIIIID, § 6, subd. (b).)

18 After the adoption of a fee or charge subject to Proposition 218, taxpayers
19 can challenge it by filing a petition for a writ of mandate in the superior court.
20 (*Silicon Valley Taxpayers’ Ass’n, Inc. v. Santa Clara County Open Space Auth.*
21 (2008) 44 Cal.4th 431, 440 [79 Cal.Rptr.3d 312].)

22 “In any legal action contesting the validity of a fee or charge, the burden
23 shall be on the agency to demonstrate compliance” with both the procedural and
24 substantive requirements of Article XIIIID. (Cal. Const., art. XIIIID, § 6,
25 subd. (b)(5).) The court exercises its independent judgment in determining
26 whether the District’s new rate structure is consistent with Article XIIIID.
27 (*Silicon Valley, supra*, 44 Cal.4th at pp. 443–450.)

1 Evidence outside the administrative record is not usually admissible. (*W.*
2 *States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 565, 576 [38
3 Cal.Rptr.2d 139].) *Western States* did recognize a narrow exception: Extra-record
4 evidence is admissible in traditional mandamus proceedings if it existed before
5 the agency made its decision and it was not possible in the exercise of reasonable
6 diligence to present it to the agency before the decision was made. (*Id.* at p. 578.)
7 Other exceptions might exist, but extra-record evidence cannot be used to
8 contradict the administrative record. (*Id.* at pp. 578–579.)

9 4. PETITIONERS' REQUEST TO AUGMENT THE RECORD

10 Petitioners request that the court augment the Administrative Record by
11 considering Exhibits A–P to petitioners' Appendix in Support of Opening Trial
12 Brief. Petitioners contend these documents are admissible on the grounds that
13 (1) the standard of review supports an augmented record; (2) most of the
14 documents are subject to judicial notice; and (3) the documents fall within extra-
15 record exceptions recognized in *Western States, supra*, 9 Cal.4th 559. (Ver. Pet.
16 at 18:15–20:25.)

17 Petitioners' request to augment the record is denied. Exhibits A, B, H, I, J,
18 K, and L include copies of District capital improvement plans, summary of fixed
19 assets and depreciation lists, construction in progress, and District staff costs
20 payroll for various years. The court agrees with the District that, with the
21 exception of one column of one page (*see* Exhibit A, page 1), these documents do
22 not provide information regarding future replacement costs—the methodology
23 used for the rate study. Additionally, some of the documents do not provide
24 information as to when they were created or for what purpose. As such, without
25 adequate foundation, the relevancy of these documents has not been established.

26 Next, Exhibit C is a newspaper article and is not relevant evidence.

27 Exhibits D, E, F, and G are copies of regular meeting agendas, minutes, or
28 packets of the District from meetings occurring after the adoption of the new

1 rate structure in December 2017. “Extra-record evidence is admissible under this
2 exception [i.e., evidence that could not be produced at the agency level] only in
3 those rare instances in which (1) the evidence in question existed *before* the
4 agency made its decision, and (2) it was not possible in the exercise of reasonable
5 diligence to present this evidence to the agency *before* the decision was made so
6 that it could be considered and included in the administrative record.” (*Western*
7 *States, supra*, 9 Cal.4th at p. 578 [emphasis in original].) Exhibits D through G
8 do not fall under the *Western States* exception, and therefore will not be
9 considered by the court.

10 The court also declines to take judicial notice of documents that were
11 created by the District. “Taking judicial notice of a document is not the same as
12 accepting the truth of its contents or accepting a particular interpretation of its
13 meaning.” (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [228
14 Cal.Rptr. 878].) “While courts take judicial notice of public records, they do not
15 take notice of the truth of matters stated therein. [Citation.] ‘When judicial
16 notice is taken of a document, ... the truthfulness and proper interpretation of
17 the document are disputable.’ [Citation.]” (*Herrera v. Deutsche Bank Nat’l Tr.*
18 *Co.* (2011) 196 Cal.App.4th 1366, 1375 [127 Cal.Rptr.3d 362].)

19 Here, while the court may take judicial notice of the existence of these
20 documents apparently created by the District, the truth of the matters stated
21 therein and the parties’ interpretation of the hearsay statements is nevertheless
22 disputed. Furthermore, as stated earlier, the court also cannot determine from
23 these documents when they were created or for what purpose. As such, taking
24 judicial notice does not assist the court in its determination.

25 **5. PROPOSITION 218: PROCEDURAL REQUIREMENTS**

26 Petitioners raise one procedural argument, which concerns the number of
27 votes each parcel received. (Pet. Br. at 31:10–32:2.) Specifically, that despite
28 some District customers receiving more than one type of service, each parcel was

1 granted only one vote. Petitioners contend that treated water customers “were
2 allowed to determine the cost of service for all Irrigation Water customers
3 because of the relative number of irrigation customers.” (*Id.* at 31:12–14.)

4 Petitioners’ argument is not persuasive. Petitioners appear to be referring
5 to weighted ballots used in the adoption of special assessments under
6 Article XIIIID, § 4, and not to property-related fees and charges under
7 Article XIIIID, § 6, in which each parcel is afforded one protest vote. Government
8 Code § 53755 states that “[o]ne written protest per parcel, filed by an owner or
9 tenant of the parcel, shall be counted in calculating a majority protest” (*Id.*,
10 subd. (b); *see also Morgan v. Imperial Irrig. Dist.* (2014) 223 Cal.App.4th 892,
11 910–911 [167 Cal.Rptr.3d 687].)

12 Because no other procedural objections under Proposition 218 were
13 asserted, the court finds the District met its burden of demonstrating compliance
14 with Proposition 218’s procedural requirements.

15 **6. PROPOSITION 218: SUBSTANTIVE REQUIREMENTS**

16 The majority of petitioners’ opening brief focuses on alleged violations of
17 Proposition 218’s substantive requirements. Petitioners assert that the District’s
18 rate increase is illegal because the new rates exceed the funds required to
19 provide water service. They further assert that the District inflated its original
20 cost of assets, included items in its asset list that did not exist at the time of the
21 rate increase, exaggerated the number or cost of components of the system, and
22 generally relied upon inaccurate and flawed information to support the rate
23 increase.

24 As noted earlier, Article XIIIID, § 6, includes specific substantive
25 requirements for any fee increase: (1) revenues derived from the fee cannot
26 exceed the funds required to provide the property-related service; (2) the revenue
27 may not be used for any purpose other than that for which the fee was imposed;
28 (3) the amount of the fee imposed as an incident of property ownership cannot

1 exceed the proportional cost of the service attributable to the parcel; (4) no fee
2 may be imposed for a service unless that service is actually used by, or
3 immediately available to, the owner of the property in question; and (5) a fee
4 may not be imposed for general government services where the service is
5 available to the public at large in substantially the same manner as it is to
6 property owners. (*Id.*, subd. (b).)

7 “The theme of these sections is that fee or charge revenues may not exceed
8 what it costs to provide fee or charge services. Of course, what it costs to provide
9 such services includes all the required costs of providing service, short-term and
10 long-term, including operation, maintenance, financial, and capital
11 expenditures. The key is that the revenues derived from the fee or charge are
12 required to provide the service, and may be used only for the service. In short,
13 the section 6(b) fee or charge *must reasonably represent* the cost of providing
14 service.” (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97
15 Cal.App.4th 637, 647–648 [119 Cal.Rptr.2d 91] [emphasis added].)

16 The Proposition 218 Omnibus Implementation Act, enacted to construe
17 Proposition 218, defines “water” as “any system of public improvements intended
18 to provide for the production, storage, supply, treatment, or distribution of water
19 from any source.” (Gov’t Code § 53750, subd. (n).) Thus, water service consists of
20 more than mere delivery of water. (*Griffith v. Pajaro Valley Water Mgmt. Agency*
21 (2013) 220 Cal.App.4th 586, 602 [163 Cal.Rptr.3d 243].)

22 The ultimate issue to be determined is whether the District’s new rate
23 structure was based upon substantial evidence. In making that determination,
24 the court reviewed the Administrative Record, upon which the District’s Board
25 relied upon in deciding to adopt new rates. The Administrative Record consists
26 of over 3,000 pages of material, including District resolutions, agenda packets
27 and meeting minutes, the “Georgetown Divide PUD Water Financial Analysis”
28

1 prepared by RCAC, email correspondence, community workshop materials and
2 notices, Capital Improvement Program documents, and press releases.

3 The court carefully read and analyzed the Administrative Record in order to
4 determine what evidence was considered by the District, and to assess whether
5 that evidence substantially supports the District's decision. Based upon the
6 foregoing, the court concludes that the District's new water rates are based upon
7 substantial evidence and comply with Proposition 218's substantive
8 requirements.

9 It should be noted that petitioners do not assert that some of the various
10 costs of providing water service should not have been included in the rate study.
11 Rather, they contend the District failed to use reliable and accurate information
12 to form the basis of the analysis, and in particular with regard to the District's
13 list of assets.

14 The rate study sets forth in detail the process of how the rates were
15 calculated. The rate setting model used by RCAC was developed over many
16 years of practice and has been used in more than 60 rate studies throughout the
17 western United States. (AR 20.) The model is geared to RCAC's clients, which
18 are communities of less than 10,000 people, such as the community in this case.
19 (*Ibid.*)

20 The rate study process began with a list of all capitalized assets, the
21 budget, and the current number of customers. (AR 21.) From the list of assets,
22 the required reserves are calculated and fed into a five-year budget projection,
23 which is adjusted for 2% inflation. (*Ibid.*) Expenses are divided between fixed
24 and variable expenses. (*Ibid.*)

25 Fixed expenses are then allocated among the different customers according
26 to their hydrological potential, as determined by their meter size, and the result
27 is a recommended Base Rate. (AR 22.) The Usage Charge is calculated based on
28 the variable expenses. (*Ibid.*) A Revenue Forecast is arrived at by applying the

1 Sales Forecast—adjusted for future growth and water conservation—against the
2 Base Rate and Usage Charge. (*Ibid.*) The Revenue Forecast is then inserted in
3 the forecasted Budget. (*Ibid.*) If the Budget does not balance with the selected
4 Base Rate and Usage Charge, they are adjusted until the Budget is balanced.
5 (*Ibid.*) To lessen the impact on District customers, rate increases could be spread
6 out over a longer period of time. (*Ibid.*) For irrigation rates, the same principle
7 works except that the rate, per miner's inch, is calculated by dividing total
8 expenses by the total miner's inches. (*Ibid.*)

9 One component of the rate study is the Capital Replacement Program
10 ("CRP"). (AR 23.) Steven Palmer, the District's General Manager, explains that
11 the CRP is a list of all District-owned infrastructure, their projected replacement
12 date, an estimate of future costs to replace capital improvements, and an
13 apportionment of funds to those future costs. (Palmer Decl., ¶ 2.) A list of
14 components, their installation date, and their original costs were supplied to
15 RCAC by Mr. Palmer, along with input from other knowledgeable District staff,
16 which was then reviewed by the District's Operations Manager. (*Ibid.*)

17 The District details the process of how the list of assets was compiled. The
18 list was compiled from multiple sources, including from assets listed in the
19 accounting system (equipment, tools, vehicles, etc.), a 2002 Water System
20 Reliability Study by KASL Report (raw and irrigation water facilities), and a
21 2007 Capital Facility Charge Study (treated water facilities). (Palmer Decl., ¶ 4;
22 AR 23.) That information was then reviewed by for completeness by the
23 District's General Manager and the Operations Manager. (*Ibid.*) The asset list
24 was further refined based on the knowledge of District staff, including the
25 Operations Manager. (Palmer Decl., ¶ 4.) District staff and RCAC worked
26 through multiple drafts and versions of the asset list to ensure it was as
27 complete as possible and complied with directions from the District Board.
28 (*Ibid.*) Mr. Palmer declares that in developing the CRP, District staff used their

1 expertise, knowledge, and judgment to complete the components of the asset list
2 as best as possible. (Palmer Decl., ¶¶ 2, 4.)

3 The Normal Estimated Life of all assets was based on American Water
4 Works Association (“AWWA”) standards and adjusted for actual conditions.
5 (AR 2891.) The Estimated Remaining Life of the assets was based on the best
6 judgment of RCAC and the District’s General Manager and Operations
7 Manager, following visual inspection of each component’s condition. (*Ibid.*)

8 The CRP excluded certain segments of ditch maintenance and repairs
9 because the District received a grant, called the CABY Grant, in 2017 to update
10 the earthen ditches with concrete lining or piping. (Palmer Decl., ¶ 5.) The
11 District removed these ditch segments from the CRP to prevent double counting,
12 as the District had already received the grant funding. (*Ibid.*) Thus, petitioners
13 contention that the District failed to properly account for the grant in the rate
14 study is not well taken. (Pets. Reply Br. at 15:8–26.)

15 The District calculated projected replacement dates for the infrastructure
16 using AWWA standards as recommended by RCAC, and then the District’s
17 General Manager and Operations Manager made further adjustments based on
18 the current condition of that piece of infrastructure. (Palmer Decl., ¶ 6.) The
19 District concedes that for some facilities or components the exact date of
20 installation was estimated and used as a starting point to calculate a
21 replacement date. For example, the District represents that most of its pipelines
22 were installed in 1974 or earlier. (*Ibid.*) For the CRP, it estimated that 13% of
23 the pipelines were installed in 1977, and 8% were installed between 1989 and
24 1991. But, the District contends that, for all assets, the actual installation date
25 is not as important as the estimated remaining life span. (*Ibid.*) As such, the
26 installation date and normal estimated life for each piece of infrastructure were
27 starting points, and then adjusted based on current condition to arrive at an
28 estimated replacement date. (*Ibid.*)

1 In calculating the future replacement cost of assets, various methods were
2 used. (Palmer Decl., ¶ 7.) For most assets the estimated current cost to replace
3 the asset is based on the Stantec Report and the KASL Report. (*Ibid.*) The cost
4 to replace equipment, tools, and vehicles was based on recent purchases. (*Ibid.*)
5 More recent cost data was available for other assets, including the Lake Walton
6 Water Treatment Plant, the ALT Plant, and the Automated Meter Reading and
7 Meter Replacement Project. (*Ibid.*)

8 Section 6 of Article XIIIID “does not require perfection.” (*Morgan, supra*, 223
9 Cal.App.4th at p. 918.) Rather, the data relied on must be “reasonably
10 dependable and adequate,” and can be derived from “reliable estimates.”
11 (*Morgan, supra*, at p. 916; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th
12 363, 372 [188 Cal.Rptr.3d 130].)

13 The court concludes that while estimates are not ideal, there is nothing in
14 the record to support that the District ignored better evidence or picked
15 estimates out of thin air. The information used to create the asset list was
16 compiled from multiples sources, was reviewed by multiple individuals, and was
17 subject to multiple revisions as better information was obtained. Accordingly,
18 the court finds that the information relied on for the CRP and rate study is
19 reasonably dependable and adequate to pass constitutional muster.

20 The District does concede there was an error in the final CRP because of
21 the inclusion of the Pilot Hill water storage tank. However, the District asserts
22 that the error had a negligible impact on the rate study analysis. In reply,
23 petitioners argue that the rate study “may be used to support future rate
24 increases, and it includes at least one asset that all parties agree no longer
25 exist.” (Pets.’ Reply at 14:17–18.)

26 The court finds as credible the District’s explanation as to how the error
27 occurred and that it had a negligible impact on the rate study analysis.
28 Mr. Palmer, the General Manager, declares that “[i]n developing the CRP,

1 District staff informed RCAC that the Pilot Hill water storage tank ('Pilot Hill
2 Tank') should be removed from the CRP asset list because it was
3 decommissioned in 2015. However, the Pilot Hill Tank was not removed from
4 and inadvertently left in the final CRP. Despite this oversight, the District
5 asserts the Pilot Hill Tank ultimately has negligible impact on the Rate Study
6 analysis for two reasons. First, the Rate Study calculates the capital
7 replacement cost of this tank as 0.66% of the total capital replacement cost of
8 the CRP. Second, the rates adopted by the Board are less than the amount
9 necessary to fully fund the CRP. Since the CRP is underfunded and the Pilot
10 Hill Tank contributes to less than one percent of the CRP's total capital
11 replacement costs, the inclusion of the Pilot Hill Tank in the CRP does not
12 impact the Rate Study analysis. The Pilot Hill Tank will become one of the
13 projects that go unfunded by the revenues received from the rate increase. In
14 allocating future revenues towards the replacement of capital assets, the District
15 will ensure that no funds are used to replace the Pilot Hill Tank." (Palmer Decl.,
16 ¶ 13.)

17 While the inadvertent inclusion of the Pilot Hill Tank is not ideal, the error
18 does not rise to the level of unconstitutionality. Moreover, the court is not
19 persuaded that the error will infect a future rate study. The error was RCAC's,
20 not the District, who informed RCAC of the error. The District is clearly aware
21 that it cannot allocate any future revenue to replace the Pilot Hill Tank. It is
22 speculation that the error will not be accounted for in a future rate study.

23 Petitioners also make numerous other assertions concerning the rate study
24 that misinterpret the study, which the court will briefly address as warranted.
25 First, the court is not persuaded by petitioners' argument that the District failed
26 to separate out general benefits from special benefits. (*See* Pets. Opening Br. at
27 24:1–8; Resp. Opp'n Br. at 24:19–26:2; Pets. Reply at 11:5–20.) Second,
28 petitioners confuse debt reserve obligations with debt payments. (*See* Pets.

1 Opening Br. at 24:9–11; Resp. Opp’n Br. at 35:21–27.) Third, petitioners are
2 incorrect that asset values do not match within the rate study. (See Pets.
3 Opening Br. at 24:12–14.) The District explains that the table at AR 26 is a
4 summary subtotal and not meant as a comprehensive list of all assets. (See
5 Resp. Opp’n Br. at 36:2–14.) Fourth, the court agrees with the District that
6 petitioners misunderstand the functions of and methodologies used in creating
7 asset lists for the Capital Improvement Plan and annual audits versus the CRP.
8 (See Pets. Opening Br. at 24:18–25:6, 27:13–30:28; Resp. Opp’n Br. at 30:2–31:8.)
9 And lastly, there is substantial evidence to support the District’s treatment of
10 drought years in the rate study. (See Pets. Opening Br. at 26:7–27:8; Resp.
11 Opp’n Br. at 36:27–37:10.)

12 In summary, the court is not persuaded that the District inflated its cost of
13 assets, or exaggerated the number or cost of components. Accordingly, the court
14 finds that the District’s new rates do not exceed the funds required to provide
15 water service. Additionally, it is permissible under Proposition 218 that the new
16 rates adopted by the District are lower than the cost of providing water service.
17 (*Morgan, supra*, 223 Cal.App.4th at p. 923.)

18 Next, the court finds that the District has met its burden of demonstrating
19 that the revenue will not be used for any purpose other than that for which the
20 rates are imposed. (Palmer Decl., ¶ 15.) Petitioners contend that the District did
21 not provide adequate information concerning where the funds from the rate
22 increase will be spent. (Pets. Opening Br. at 25:7–20.) This argument is not well
23 founded. The rate study includes budgets detailing what revenue is needed to
24 meet operating and other expenses of providing water services. (AR 45–55.)
25 Here, as discussed earlier, the District has shown that the rates represent the
26 actual cost of service. Given that, it is permissible for the District to deposit the
27 collected fees in the general fund, rather than separate accounts, and monitor
28 the revenue and expenses to ensure compliance with budgetary constraints, as

1 well as make necessary adjustments. (*Moore, supra*, 237 Cal.App.4th at pp. 373–
2 375.)

3 The new water rates do not exceed the proportional cost of the water service
4 attributable to each parcel. Petitioners argue that the irrigation water
5 customers bear an unfair and disproportionate burden. The treated water rates
6 versus the irrigation water rates are significantly different, but that appears to
7 be a result of, at least in part, the economies of scale (3,774 treated water users
8 versus 408 irrigation customers) rather than an unconstitutional method of
9 apportionment. (AR 17.)

10 “Apportionment is not a determination that lends itself to precise
11 calculation. [Citation.] In the context of determining the validity of a fee imposed
12 upon water appropriators by the State Water Resources Control Board, the
13 Supreme Court has recently held that “The question of proportionality is not
14 measured on an individual basis. Rather, it is measured collectively, considering
15 all rate payors.’ [Citation.] [¶] ... Proposition 218 prescribes no particular
16 method for apportioning a fee or charge other than that the amount shall not
17 exceed the proportional cost of the service attributable to the parcel”
18 (*Griffith, supra*, 220 Cal.App.4th at p. 601.)

19 Here, to avoid one user group from subsidizing the other user group, and
20 vice versa, the District split assets, budgets, reserves, and debts between the
21 treated water customers and the irrigation customers proportionally based on
22 certain rules and standards. (AR 19, 23–36; Palmer Decl., ¶¶ 14, 16.)
23 “[G]rouping similar users together for the same ... rate and charging the users
24 according to usage is a reasonable way to apportion the cost of service. That
25 there may be other methods favored by plaintiffs does not render defendant’s
26 method unconstitutional. Proposition 218 does not require a more finely
27 calibrated apportionment.” (*Griffith, supra*, 220 Cal.App.4th at p. 601.) So too in this
28

1 case, that petitioners may favor other methods does not render the District's
2 method unconstitutional.

3 The court further concludes that the water services are actually used by, or
4 immediately available to, the property owners. In particular, the court agrees
5 with the District that it was proper to include the new ALT Plant in the CRP,
6 even if it was not operational at the time the new rates were adopted. The ALT
7 Plant will replace an existing treatment plant. (AR 45; Palmer Decl., ¶¶ 8–9.)
8 Thus, the service is already immediately available via the existing plant.

9 Although the Plant was not completed at the time of the rate study, it is a
10 significant piece of the District's infrastructure and requires a long timeframe to
11 fund, and which is estimated to cost \$40 million to replace in the future. (AR 45.)
12 The new ALT Plant is expected to begin operations during the time period
13 covered by the new rate structure. (Palmer Decl., ¶ 8.) The ALT Plant's costs are
14 allocated only to treated water customers given that irrigation customers will
15 not benefit from the new Plant. (AR 25.) Proposition 218 allows public water
16 agencies to pass on to their customers the capital costs of improvements with
17 these longer funding timelines in order to ensure continued water service.
18 (*Capistrano Taxpayers Ass'n, Inc. v. City of San Juan Capistrano* (2015) 235
19 Cal.App.4th 1493, 1497, 1501–1502 [186 Cal.Rptr.3d 362].) The court agrees
20 that the new ALT Plant is a known cost and will be operational during the time
21 period covered by the new rates. As such, it was proper to include the ALT Plant
22 in the CRP.

23 For similar reasons, it was not improper for the District to include the
24 Automated Meter Reading and Meter Replacement Project in the CRP, despite
25 that the project is not completed. (See Pets. Opening Br. at 11:13–17; Resp.
26 Opp'n at 33:3–17; Pets. Reply at 14:22–15:6.) There are existing meters being
27 replaced, and thus the service is immediately available. Even assuming the
28 District obtains a loan for most of the project cost, it is appropriate for the

1 District to include the project in the CRP given that it is a known asset, and it is
2 appropriate to use cost data based upon the best available information. (Palmer
3 Decl., ¶ 10.)

4 Lastly, the District has met its burden of establishing that the fees will not
5 be imposed for general government services. The court already rejected
6 petitioners' argument that the District failed to separate out general benefits
7 from special benefits. (See Pets. Opening Br. at 24:1-8; Resp. Opp'n Br. at
8 24:19-26:2; Pets. Reply at 11:5-20.)

9 **7. CONCLUSION**

10 After independently reviewing the evidence, the court concludes that the
11 District's new water rates are supported by substantial evidence, and the
12 District met its burden of showing compliance with Proposition 218's procedural
13 and substantive requirements. The petition for writ of mandate is **DENIED**.

14 **IT IS SO ORDERED.**

15
16 Dated: January 9, 2020


17 **Michael J. McLaughlin**
Honorable Michael J. McLaughlin
Superior Court Judge

18 //

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF EL DORADO

3 CLERK'S CERTIFICATE OF MAILING

4 Georgetown Divide Taxpayers Association, et al
5 vs.
6 Georgetown Divide Public Utility District

7 Case Number: PC20180211

8 I, Wendy Warden, Court Clerk of the Superior Court of the State of California, County of El Dorado, do
9 hereby certify that I am a citizen of the United States and employed in the County of El Dorado, I am over the age of
10 eighteen years and not a party to the within action; my business address is Superior Court of the State of California,
11 County of El Dorado, Courthouse, 1354 Johnson Blvd., Suite 2, South Lake Tahoe, CA 96150, and that I served the
12 following documents: Proposed Statement of Decision on the parties as indicated below:

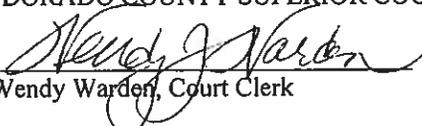
- 13 • Donald B. Mooney, Esquire; Law Offices of Donald B. Mooney, 417 Mace Blvd., Suite J-334; Davis,
14 CA 95618
15 • Robin R. Baral, Esquire; Churchwell White LLP, 1414 K Street, 3rd Floor; Sacramento, CA 95814

16 I am familiar with the business practice of the EL DORADO COUNTY SUPERIOR COURT with regard
17 to collection and processing of documents for mailing with the United States Postal Service. I enclosed a true copy
18 of said document in a sealed envelope which was placed in a designated area for outgoing mail, addressed as set
19 forth above. Mail placed in that designated area is given the correct amount of postage and is deposited that same
20 day in the ordinary course of business in a United States mailbox in the City of South Lake Tahoe, California. I
21 further certify that local counsel are served a copy of documents either by an attorney service, by Inter-Office Mail
22 or by placement in their boxes in the Superior Court Clerk's Office.

23 The document described above was mailed and placed for collection and mailing in SOUTH LAKE
24 TAHOE, CA on January 09, 2020 in the ordinary course of business.

25 Executed on January 09, 2020 in South Lake Tahoe, California.

26 EL DORADO COUNTY SUPERIOR COURT

27 By: 
28 Wendy Warden, Court Clerk

RECEIVED
JAN 13 2020

BY: _____