SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

EUGENE G. PLANTIER AS TRUSTEE OF THE PLANTIER FAMILY TRUST, PROGRESSIVE PROPERTIES INCORPORATED, and PREMIUM DEVELOPMENT, LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. RAMONA MUNICIPAL WATER DISTRICT; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2014-00083195-CU-BT-CTL **NOTICE OF ENTRY OF JUDGMENT** Judge: Hon. Timothy Taylor Dept.: C-72 Complaint Filed: January 13, 2014 Trial Date: October 30, 2015

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 1, 2015, Judgment was entered in the above-captioned matter. A conformed copy of the Judgment and Order is attached hereto as Exhibit "A" and is incorporated herein by reference.

DATED: December 4, 2015

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
/s/ *John D. Alessio*
Attorney for Defendant Ramona Municipal Water District

EXHIBIT "A"

JUDGMENT AND ORDER

This matter came on regularly for trial on the bifurcated issue of Defendant RAMONA MUNICIPAL WATER DISTRICT'S (the "District") special defense of failure to exhaust administrative remedies ("Phase 1") on November 2, 2015, and for a bench trial on all remaining issues set to begin immediately thereafter ("Phase 2"), if necessary, in Department C-72 of this Court, the Honorable Timothy B. Taylor presiding.

Plaintiffs EUGENE G. PLANTIER AS TRUSTEE OF THE PLANTIER FAMILY TRUST, PROGRESSIVE PROPERTIES INCORPORATED, and PREMIUM DEVELOPMENT, LLC, on behalf of themselves and all other similarly situated (collectively, "Plaintiffs"), appeared by and through their attorneys of record Allison Goddard and James Patterson of Patterson Law Group, and Todd Carpenter of Carpenter Law Group. The District appeared by and through its attorneys of record John D. Alessio and Adriana R. Ochoa of Procopio, Cory, Hargreaves & Savitch LLP. The parties proceeded with Phase 1 of trial on November 2, 2015. The parties gave opening statements and the Court heard from six witnesses, and received more than 25 exhibits into evidence. Phase 1 was argued and submitted on November 3, 2015.

On November 3, 2015, the Court served a Tentative Decision on Phase 1 via facsimile in accordance with Code of Civil Procedure section 632 and California Rules of Court, Rule 3.1590(c)(4). The Court's Tentative Decision instructed that the Tentative Decision would become the Statement of Decision unless either party took the steps called for in California Rules of Court, Rule 3.1590(d). Neither party took any steps within ten (10) days after service of the Tentative Decision as required by California Rules of Court, Rule 3.1590(d). The Court's Tentative Decision (attached hereto as **Exhibit A**) is therefore the final Statement of Decision in this action and is incorporated herein by reference. As set forth more fully in the Statement of Decision, the action is barred by Plaintiffs' failure to exhaust administrative remedies, and there is no need for Phase 2 of the trial.

NOW, THEREFORE, IT IS ADJUGED, ORDERED AND DECREED that judgment be entered in favor of Defendant RAMONA MUNICIPAL WATER DISTRICT and against Plaintiffs EUGENE G. PLANTIER AS TRUSTEE OF THE PLANTIER FAMILY TRUST, PROGRESSIVE PROPERTIES INCORPORATED, and PREMIUM DEVELOPMENT, LLC, on behalf of themselves and all others similarly situated. The District shall be awarded its attorney's fees in the sum of $_____ and costs in the sum of $_____ from the representative Plaintiffs, jointly and severally.

Class Members Included in the Judgment

In accordance with California Rules of Court, Rule 3.771(a), the following describes those whom the court finds to be members of the class:

> Ramona Municipal Water District customers who have paid a Sewer Service Charge on or after November 22, 2012, were customers of the District before April 13, 2015, and did not opt out of the class before November 2, 2015.

Notice of Judgment to Class

In accordance with California Rules of Court, Rule 3.771 (b), notice of this Judgment and Order must be given to the class in the following manner:

Content of Notice of Judgment: The District's counsel is hereby ordered to prepare, file and serve a Notice of Entry of Judgment and Order by no later than ten (10) days after entry of this Judgment. The Notice of Entry of Judgment and Order shall include a copy of this Judgment and Order, including the Statement of Decision attached as Exhibit A hereto.

Time and Manner of Notice: Plaintiffs' counsel will provide the Notice of Entry of Judgment and Order to KCC, LLC, a professional class action administration firm, by no later than ten (10) days after the Notice of Entry of Judgment and Order is filed. Plaintiffs' counsel shall also provide KCC, LLC with the same electronic list of sewer customers used for distribution of Class Notice. Plaintiffs' counsel will direct KCC, LLC to mail the Notice of Entry of Judgment and Order to all sewer customers on the list within ten (10) days of receipt of the Notice of Entry of Judgment and Order and list.

Cost of Sending Notice of Judgment: Plaintiffs will bear the costs for KCC, LLC to print and mail the Notice of Entry of Judgment and Order to all class members on the sewer customers list.

IT IS SO ORDERED.

Date: December 1, 2015

/s/ Hon. Timothy B. Taylor
JUDGE OF THE SUPERIOR COURT

EXHIBIT "A" TO JUDGMENT AND ORDER

Decision Following Bench Trial (Phase 1)

Plantier v. Ramona Municipal Water District, Case No. 2014-083195

Trial: Nov. 2-3, 2015, Dept. 72

1. Overview and Procedural Posture.

This is a class action seeking declaratory and monetary relief for a class of Ramona Municipal Water District ("District" or "RMWD") wastewater customers. Plaintiffs allege RMWD's wastewater fees are based on an Equivalent Dwelling Unit ("EDU") billing system, and that this system does not meet the proportionality requirements set forth in Article XIII D Section 6(b)(3) of the California Constitution ("Proposition 218") and related statutory requirements. Plaintiffs seek a ruling that RMWD's various EDU-based wastewater fees are unlawful and invalid.

The action was filed in January of 2014, and assigned to Judge Meyer. Plaintiffs challenged him (ROA 11), and the case was thereupon reassigned to Dept. 72. ROA 9.

RMWD filed a demurrer and a motion to strike; both were supported by requests for judicial notice. ROA 14-20. Instead of opposing the demurrer, plaintiff filed the FAC. ROA 24. Defendant then answered. ROA 26.

At a due-course CMC, the court set the case for a hearing on class certification on January 16, 2015. ROA 33, 35. However, defendant later changed counsel, and the parties sought additional time to prepare the class certification issues for decision. ROA 37. The court granted this request. ROA 43-48.

On February 27, 2015, the court granted class certification over defendant's vigorous opposition. ROA 89. The parties later reached a stipulation regarding class notice. ROA 94.

The court set the case for a bench trial in June of 2015. ROA 88-91. However, RMWD later sought a trial continuance, which the court allowed over plaintiff's vigorous objection. ROA 108-121. The bench trial was re-set for October 30, 2015. ROA 117, 120.

In September of 2015, RMWD sought bifurcation of its special defense of failure to exhaust administrative remedies. ROA 129-130. On October 9, following opposition briefing (ROA 139), the court granted the motion; the court found that "whether the plaintiffs exhausted their administrative remedies is a threshold matter that bears on the viability of the plaintiffs' underlying cause of action." The court ruled that the affirmative defense would be tried first, to the court. ROA 149, 153.

The parties answered ready at the TRC (ROA 154, 155), and at the Friday, October 30 trial call. The court deferred rulings on the motions *in limine* (both of which related to Phase 2 issues), and confirmed Phase 1of the trial for Monday, November 2. ROA 176.

Both sides gave opening statements on November 2 starting at about 9:10 a.m. Plaintiffs' featured a three year timeline, which was very helpful (once the dates of the annual Prop. 218 hearings were added to it by the court).

The court heard from six witnesses on November 2. More than 25 exhibits were received in evidence. Phase 1 of the case was skillfully argued, and submitted, on November 3.

The court published its tentative decision on Phase 1 in accordance with CCP section 632 and CRC 3.1590 on Nov. 3, 2015. The tentative decision stated it would become the Statement of Decision (SOD) unless either party took the steps called for in CRC 3.1590(d). Neither side did so, so by operation of law, the tentative decision became the SOD.

2. Applicable Standards.

Prop. 218 required that the District "conduct a public hearing upon the proposed fee or charge" after providing notice of the proposed change. (Cal. Const. Art. XIII D §6(a)(2).) That section specifically requires that the District "consider all protests against the proposed fee or charge," and if protests are presented by a majority of owners of the identified parcels, directs the District to "not impose the fee or charge." (*Id.*) Regardless of whether there is a majority in protest, the public hearing and protest requirement is mandatory; the likely intent was to insure that boards in small municipalities such as RMWD have ample opportunity to address and investigate issues relating to charges and fees prior to litigation and in the context of setting their revenue requirements.

Similarly, the provisions of the District's own Code ("RMWD Code") governing the provision of sewer service in the Santa Maria and in the San Vicente areas at issue here require that "any person desiring to challenge any provision" of those regulations "must submit the grounds for the challenge with supporting authority in writing" to the Board for its consideration. The RMWD Code is clear that the failure to do so "shall be grounds to bar any subsequent suit on the grounds of failure to exhaust administrative remedies." RMWD Code §§7.52.170 and 7.54.170.

The law is "well settled" that an available administrative remedy "must be invoked and exhausted before judicial review of the administrative action is available." (*Roth v. City of Los Angeles* (1976) 53 Cal.App.3d 679, 686.) That rule is "not a matter of judicial discretion, but rather is a jurisdictional prerequisite" and even a challenge on a constitutional ground requires the exhaustion of administrative remedies. (*Id.* at 687) (lawsuit barred because plaintiffs failed to object at the City Council hearing to an assessment on their property to abate a public nuisance on their property).

Exhaustion of administrative remedies is only required when an adequate administrative remedy is available. (*Unfair Fire Tax Com. v. City of Oakland* (2006) 136 Cal.App.4th 1424, 1430.) A statute or regulation must establish "clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties" to set up an adequate administrative remedy. (*Id.* at p. 1429.) In *Unfair Fire Tax Com.*, the court rejected the defendant's argument that an ordinance established an adequate administrative remedy because it "merely allows a person aggrieved by a resolution creating a fire suppression district to request reconsideration of the resolution by the same decision-making body that adopted the resolution, ..." (*Id.* at pp. 1429-30.) Because the ordinance did not state "how the appeal (or request for reconsideration) may be taken, whether the appellant will be entitled to a hearing, when the matter will be heard, what evidence may be submitted, or the standard for reconsidering the city council's earlier decision," it did not set up an adequate administrative remedy, and the plaintiff was not required to pursue it before filing suit. (*Id.*).

Courts have explained that the policy behind the exhaustion requirement is that the doctrine "affords the public agency an opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review," and provides the agency with the "opportunity to act and render the litigation unnecessary," which can "lighten the

burden of overworked courts." (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1137, internal quotation marks omitted, quoting *Leff v. City of Monterey Park* (1990) 218 Cal.App.3d 674, 681.) As the Evans court put it, the "essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories *before* its actions are subjected to judicial review." (*Id.* at 684, quoting *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198, emphasis in original.)

3. The Evidence.

In part, the case came down, as many cases do, to witness credibility. In making the credibility determinations set forth below, the court considered, among others, the factors of CACI 107.

The court ruled that, because the defendant was pursuing a special defense on which it had the burden of proof, the defense would proceed first. This is consistent with the general approach under Prop. 218, section 6(b)(5), wherein the agency has the burden of proof. RMWD's first witness was Richard Hannasch, at about 9:37 am. 1983 graduate of the Wharton School. CPA. Certified fraud examiner. Public agency work since 2001. Started with District in 2011 as finance manager. Promoted to CFO in 2014. Draft notices are prepared each year, reviewed, and mailed out 45 days before public hearing. Months-long process every year because the revenues and expenses are part of the review. Each year in June, the Prop. 218 hearing is held because the fiscal year starts July 1. After public hearing, the Board has a further discussion and makes any necessary adjustments and reviews the budget. Members of the public often attend. Staff and managers and the engineer attend. At the hearing there is a presentation. Extensive discussion and preparation for these meetings. Usually a significant amount of press coverage. Budget preparation is extensive as well, done from the ground-up based on rates, anticipated expenses. Typically taken up at the same meeting in June. Very detailed. Board is very sensitive to public input.

Ex. 142 is the notice of the public hearing for 2012. Page 3 talks about wastewater. Projected costs are reviewed in April. Approved by Board in April. Mailed at least 45 days before date of public hearing. Protest language sets forth the minimum. Also invite oral testimony. "Authorized to impose" does not mean "will impose." Several times the Board has authorized a lower amount.

Ex. 143 -agenda memo for June 26 meeting. Prepared earlier in June, after the notice went out. Amounts proposed were less than the amounts in Ex. 142. The amounts in the agenda memo were the amounts proposed at the Prop. 218 hearing.

At the hearing the Board formally receives the written protests, and opens the hearing to oral protests. After hearing, the Board considers then takes a vote.

Ex. 151: minutes for the meeting of June 26, 2012. Do not reflect any named plaintiff appearing. Metts is the District Engineer. Outsourced to his (Metts) employer, Dudek.

Ex. 153: Public hearings are recorded. At page 18-19 he discussed decreasing rates from those in Ex. 142.

Ex. 154 is the budget approved after the June 2012 hearing. Copies were provided at the public hearing.

Ex. 187 is the 2013 version of Ex. 142. Mailed at least 45 days before hearing, which was on June 25, 2013. Very similar to Ex. 142.

Ex. 189 is the 2013 version of Ex. 143.

Ex. 352 are the nine protest letters appended to the notice of hearing for 2013. No protesters brought up EDU methodology. Of 5000 sewer customers, only 9 protests, and most of those dealt with water, not sewer. Repeat protestors every year.

Ex. 192 is the minutes for the June 2013 meeting.

Ex. 271 is the 2014 version of Exs. 142, 187 -notice of public hearing.

Ex. 282 is the 2014 agenda memo -the 2014 analog of Exs. 143 and 189.

Ex. 278 is the transcript of the hearing for June 2014. One sewer service rate went down.

Ex. 283 is the minutes for the June 2014 meeting. A similar presentation was made to the board. The vote was not unanimous. A member of the board dissented.

Ex. 353 has the 2014 protest letters. There were 12 letters, including duplicates. Repeat protestors Luccio. Most were water, not sewer. No challenge to EDU.

Ex. 351 is the protest letters from 2012.

Ex. 316 is the Prop. 218 notice for 2015. Same process was followed.

Ex. 354 includes the protest letters for June 2015. There were 16, of which one was untimely. Two protestors objected to the EDU methodology. Piper and Hurst. Board took it seriously.

Witness has attended all Prop. 218 hearings since he joined the District and Plantier has never attended one. Same with Day. The Prop. 218 hearing is extensive - they are the most attended meetings of the year. His observation is that the Board members pay close attention to the input they receive. After the budget is approved, staff carries out the operations as the budget requires. The District sends an electronic file to the County, and the County includes the charges on the property tax bills. This is done is July.

Cross at 11:10. The "months long" process - part of it occurs before annual notice goes out. EDU schedule in Legislative Code - Ex. 267. EDUs are part of the annual discussion. Notice in 2014 had additional discussion of EDUs - Ex. 271, but it does not address the changing of the schedule of EDUs. The notice is the same regardless of how many EDUs are assigned. No separate notice for commercial user. Commercial user should know its assigned EDUs.

Ex. 154: The budget lays out revenue and expenses -not how EDUs are assigned. The Prop. 218 notice is the only one that is mailed to customers. The Board has made modifications to the budget, but not as the result of oral comments at the June meetings.

He is unaware of a policy to contact a protestor to ask for more information.

Second witness at 11:30: David Barnum. He is the General Manager of the District. He has a BS from SDSU in accounting and finance. He worked for the City of Carlsbad; then came to RMWD. In 2008 he was CFO; then asst. GM and now GM. GM since 2011. Responsible for the day to day operations of RMWD. Staff brought forward as issue relating to grease dumping from Plantier' s restaurant. A serious problem. No industrial waste permit and EDU was well short of what was required. Dudek is the outside District Engineer. Staff worked extensively with Plantier. Santa Maria sewer service. Ad hoc committee of board recommended waiver of a significant part ($96,400) of his fee. Ex. 141 reflects this. He refused to pay and denied dumping. District offered him a payment plan. Rejected this as well. Met with the Plantiers. Comprehensive discussion. Letters from attorneys.

Ex. 510 is the UCAN letter "in regard to Mr. Plantier." Everything including the kitchen sink. Board considered it. Rejected it as a tort claim. Plantier may has paid some of the fees but not all. Ex. 654 is the attorney demand letter from Plantier's current counsel. He was copied. After Prop. 218 hearing for 2013. Draft complaint attached. Premium not included. Never saw Plantier at any Prop. 218 hearing. Same with Day. No written protest from either.

Cross at 11:50. Aug. 16, 2012 was date of meeting with Plantier. Aware he had come to the office and hand delivered a letter. Ex. 509 is his letter offering to set it on the agenda. He did so on a public agenda. A board member did contact him. Tiffany Friend did so, prior to the meeting. It was "agendized." Ex. 509 responded to Ex. 504. He (Plantier) just did not want to pay.

Cross continued after the noon recess. Back to Ex. 509. On agenda for Nov. 2012 board meeting. Not sure when he was contacted. Agendas 72 hours in advance. Long board meeting including grease video. Plantier complained he did not have enough time. The board president gave him another month. Ex. 510 was presented to the Board at or before the Dec. 10, 2012 meeting. Board did not vote to reevaluate Plantier EDUs.

Ex. 538 is the District's response to Ex. 510. Witness does not recall a subsequent agenda item. Letter offered him the opportunity to provide further authority.

The third witness was George Newman, called under Evid. Code section 776. Engineering degree in 1954. Also MBA and Ph.D. Mechanical engineer for 30-40 years. Moved to Ramona in 1981. Investment adviser and car wash. Believes he is part of the class action. He denies a prior class action against RMWD. Acknowledges a prior class action against a mobile home park. A prior lawsuit against the District over a meter reading. He prepared a study for Piper about a year ago. Sent it to Diane Jacobs. Denies telling Piper to go to a Prop 218 hearing. Recalls meetings with plaintiffs and reporters. First one was well attended. Second one less so.

Absolute waste of time to attend the Prop 218 meetings. But never went to one. Went to other meetings regarding water meters. "I saw how they operated." The "directors just voted "aye" to whatever Barnum said." The meetings he attended involved meter rollover. He gave an example from Winnipeg Canada in the middle of winter in 1960. Electric meters do the same thing. SDG&E finally agreed with him.

The fourth witness was plaintiff Plantier, called pursuant to Evid. Code section 776. Owns 109 10th Street in the Santa Maria; he leases it to some people who operate a restaurant. April 12, 2012 - got notice from the District it was raising his EDUs. He determined he should be at 1.8 EDUs and retained Newman to help him figure this out. He also thought the methodology violated his California constitutional property rights.

Sometime after April 12 he began looking in a detailed fashion at the Legislative Code. He admits receipt of notices of Prop 218 meetings. He authorized the sending of Ex. 654. This occurred after the June 2013 meeting. "These notices put you in a box." Anything I had to say was not going to approach a 66% majority. Concluded it would be a waste of time. Never been to a Prop. 218 meeting. Admits receiving all the notices. [The witness had an agenda of things he wanted to say, some of which seemed scripted.] Never was going to be convinced that the EDU method was fair.

Friendly cross: Owned restaurant since 1998 for retirement income. Always paid sewer fees. Got a letter (Ex. 138) in 2012. His first notice. He was led into saying he didn't know what an EDU was. It had been a restaurant since the 1970s. Prior tenant went bankrupt. Open only 2-3 weeks before the letter came. Jumped in the car and went immediately to Ramona.

The engineers made an honest attempt to explain but he didn't "have an opportunity" to "understand EDUs." Met with ad hoc committee. Ex. 141 - after receipt, went to his personal attorney (Nunn). Ex. 502 was the result. See item 2. Had a "whiskey and a beer chaser" afterwards.

Had a meeting with Barnum later. His wife was present. Attempted to discuss methodology for allocating EDUs. Ex. 503 is his follow-up letter in an effort to get a formal hearing and preserve the right to sue. Ex. 504 was dated the very next day. Based on his "copious" notes with his wife's input.

Ex. 509 responds to Ex. 504. Thought he was being granted a formal hearing. No one contacted him until 9a.m. when the hearing was at 2 p.m. Interrupted meeting in progress and got a continuance. Ex. 510, the UCAN letter which he reviewed ahead of time. Attended the Dec. 7 meeting. We were expecting a formal hearing. Got 3 minutes –"brought the brief in" and "I made the case" "that they (Board) should review it." They voted "four to five against me."

Ex. 538 is a response to Ex. 510. Didn't attend June 2013 meeting because it would not be good for me emotionally and knew it would not be productive. He said if he had been added to a future agenda specifically, he would have attended. The court did not believe this testimony. He went to the Grand Jury and Supervisor Jacobs' office.

Re-direct: Paid at the 2 EDU, not at the 6.82 EDU level. Ex. 502. Does not recall exactly where he got the quote. Ex. 509. Discussed gift of public funds at the meeting. Barnum "called me a liar."

Fifth witness was Orrin Day, called under Evid. Code section 776. High school graduate. Owns Progressive Properties, Inc. Owns an office building in Ramona. 8 tenants. Also owns Premium Development LLC. Owns a restaurant and a concert hall in restaurant. Paid full EDUs on the restaurant. Feels District is overcharging for sewer. No reason to believe notices of annual Prop. 218 did not arrive. Does not open his mail. Decided not to go to public bearings because felt it would be a waste of his time. Never went to one. Went to another kind of meeting maybe 10 years ago.

Friendly cross: He is a general contractor in Ramona. CFO Sherman opens his mail. Notices from District not among the items he has instructed Sherman to send to him. Owns directly or indirectly 11 parcels in Ramona. Met with Plantier. Felt sewer was overcharged. Was looking to purchase 620 Main Street at this time. Was a hair salon. 1 EDU at that time; sought a sewer permit to change to a restaurant. Response was 4.6 EDU and $97,000.00. Ex. 621. 3.68, not 4.68. Installed a grease interceptor.

Ex 654. He agreed to it. Didn't attend further hearings because hired counsel.

Never considered sending anything to the District in writing.

The defense rested around 3:40.

Plaintiffs called the sixth witness, D. Michael Metts under Evid. Code section 776. He is the District Engineer, and was in November 2013. Aware of Ex. 654. Ex. 511 is his own work product once the claim was received. Was trying to determine if EDU had a relationship to the restaurant's water use. He calculated 3.92 EDU versus the 6.82 assigned.

Friendly cross at 3:50 p.m. Just under 60% occupancy - not atypical, and reasonable because District has to be ready for 100% occupancy. Excellent example using Qualcomm Stadium. Sewer has to be ready for Sunday game day use even on a day with no game.

4. <u>Discussion and Rulings.</u>

Defendant contends that none of the named plaintiffs or any of the other members of the class (1) protested its use of the EDU-method to calculate sewer fees under Prop. 218 prior to the RMWD approving sewer fee increases in 2012, 2013 or 2014; or (2) challenged administratively, as required by the District's administrative rules, the District's approval of the increased sewer fees for those years or its decision to use the EDU-method to set sewer fees. The District further contends that at most, a written protest in June of 2015 (Ex. 354) started the process of exhausting administrative remedies as called for by Prop. 218 and the RMWD Legislative Code.

Plaintiffs contend they exhausted their administrative remedies by submitting a written administrative claim to Mr. Darrell Beck, President of Defendant's Board of Directors on November 21, 2013. Ex. 654. This document attached a draft complaint similar to the one later filed with the Curt. [The FAC later dropped four of the six claims.] RMWD rejected the claim on January 6, 2014. Ex. 655. Plaintiffs urge that Ex. 654 satisfied Legislative Code sections 7.52.170 and 2.44.050(C).

Plaintiffs also contend Legislative Code sections 7.52.050(D) and 7.54.050(D) do not set up an adequate administrative remedy because the District is not obligated to perform a re-evaluation of EDUs under these provision. Instead, they state that District "***may*** perform" a re-evaluation at a property owner's request. Plaintiffs argue these sections do not establish any standards for "submission, evaluation and resolution of complaints by aggrieved parties" as required under *Unfair Fire Tax Com., supra.*

Although the District claimed in the bifurcation motion[i] that the failure to exhaust arose from non-compliance with the exhaustion requirements of Prop 218 as well as non-compliance with the Legislative Code, in footnote 1 of the its Reply brief (ROA 147) and again at closing argument, the District conceded Ex. 654 arguably satisfied the Legislative Code as of Nov. 21, 2013. Thus, the questions are 1) whether there is an exhaustion requirement under Prop. 218, and if so 2) whether plaintiffs satisfied the exhaustion requirements of Prop. 218 for the 2012-2013 and 2013-2014 fiscal years (the two budget cycles ending June 30, 2014. The answers to these two questions are "yes" and "no," respectively.

The court finds there is an exhaustion requirement under Prop. 218. Plaintiffs argue there isn't one, yet in the next breath argue they complied with it. The court, acknowledging the dearth of direct authority, holds that the case closest in point is *Wallich's Ranch v. Kern County Pest Control Dist.*, 87 Cal. App. 4th 878 (2001). Fairly read, and extended to the facts of this case, *Wallich's* imposes a requirement that plaintiffs participate in the annual Prop. 218 process, which is (according to the evidence in this case), inextricably intertwined with the annual budget process.

Cal. Const. art. 13D, § 4 provides:

"The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. **At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots.** The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property."

Participation in the "public hearing" contemplated by the sentence in bold type immediately above is a centerpiece of the process set up by Prop. 218. The constitutional mandate is for the agency board to "consider all protests," not just those from a majority. Obviously, the RMWD Board could not have considered a protest that was never made. Plaintiffs' contention that Messrs. Day and Plantier were free to ignore this part of the process would be tantamount to the court excising these provisions from the constitutional scheme. This the court is not free to do. See *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 17-18 (court must give significance, if possible, to every word or part of a statute, and harmonize the parts by considering a particular section in the context of the whole).

Plaintiff's counsel tendered, at closing argument, the August 12, 2015 opinion of the Sixth Appellate District in *Great Oaks Water Co. v. Santa Clara Valley Water Dist.*, No. H035260. According to the official docket for that case, which is available at appellatecases.courtinfo.ca.gov, rehearing was granted on September 10 and the cause submitted on October 2, 2015. So the court disregards the August 12 opinion.

Having determined there is an exhaustion requirement, the court turns to whether plaintiffs made the necessary effort to give the RMWD Board the opportunity to resolve the dispute short of litigation and without threatening the viability of the District by not allowing the District to take up a challenge to the EDU scheme in the context of the annual budget process. The court finds they did not.

In order to be meaningful, the effort at exhaustion must set forth at least the outlines of the basis for the disagreement. Otherwise, the exhaustion requirement is just a mechanical charade. And plaintiff's purported efforts to exhaust their remedies

never did this. The letters were long on summary pronouncements and bald assertions, but backup for these allegations was not provided. And the District reasonably offered to receive same. There are several examples of this:

Ex. 502: Letter from Plantier lawyer (Nunn) to District's lawyer (Miller), after the June 26, 2012 public hearing, asserting EDU calculation is "arbitrary and discriminatory and constitutes an abuse of official authority." No substantive basis for these conclusory statements is offered.

Ex. 503: Plantier letter to Board president, again after the June 26, 2012 public hearing, challenging and disputing (among other things) the 6.82 EDU calculation, without stating a factual basis therefor and demanding a "full board hearing" "at the earliest possible date."

Ex. 510: UCAN letter, long after June 26, 2012 public hearing, asserting violation of Prop. 218 but citing no legal authority for this proposition (as Miller's response, Ex. 538, points out).

Ex. 538: Miller's response to UCAN: "Should you wish to present any additional authority in support of your position, please forward same to my attention immediately so the Board may consider all relevant authority."). Plantier never did so.

Turning to plaintiffs' assertions of futility: the court believed RMWD employees Hannasch and Barnum when they testified to the effect that the District Board is genuinely interested in input from ratepayers, and that a legitimate, careful and legally/factually supported challenge to the District's EDU regime in the context of the annual Prop. 218/budget hearing would have received careful consideration. Their testimony was measured and candid. The court found this testimony more persuasive than the testimony of Day, Plantier and Newman. Plantier plainly had an axe to grind given his dispute regarding the grease discharge, and his contempt for RMWD management was palpable. For whatever reason, he seems to feel he is free to make up his own rules. The court did not find Newman's "expertise" from Canada in the 1960's to be at all persuasive. And Day was simply negligent in the management of his own affairs (and those of his entities) when he failed to instruct the employee who opens his mail to forward important notices from the RMWD to him.

Plaintiffs returned several times to the theme enunciated in their trial brief at page 9:25- 26: they gave the District every opportunity to act <u>before they commenced litigation</u>. But this misses the point of the exhaustion requirement as laid out in *Wallich's*: by stubbornly refusing to participate in the public hearing process, they failed to give the District the opportunity to act <u>before it set its rates (and consequently its budget)</u> for the 2012-2013 and 2013-2014 fiscal years. The time to protest the EDU regime was in the context of the annual Prop. 218/budget process, when the District was considering rates and revenue requirements for the coming year. This is what plaintiffs failed to do substantively, procedurally and temporally. Allowing them to bypass the public hearing process set up by Prop. 218 and proceed immediately to litigation seeking (according to plaintiffs' trial brief at 19:12) a refund of "excessive fund balances" turns art. 13D, §4 of the Constitution on its head and may very well threaten the viability of the RMWD.

In light of the forgoing, the court finds the District carried its burden of proof on the special defense, and the special defense was proven by a preponderance of the evidence. The District acknowledges the plaintiffs may file another action (ROA 147 at 9:12-13); the court ventures no prediction in this regard. Also, it will remain to be seen whether, in any future action, plaintiffs choose an expert witness who is actually an expert on rate-setting under Prop 218.[ii] For the present, the case as pled is clearly barred by the failure to exhaust administrative remedies. Plaintiffs' effort to reach back to November 21, 2012 is clearly untenable due to their failure to exhaust. RMWD is entitled to dismissal. There is no need for phase 2 of the trial, which was scheduled to start tomorrow. It is ordered off calendar.

The court finds it need not resolve today whether, as the District contends, any future action would be limited by protest letters received in June 2015 (Ex. 354), or whether the Nov. 21, 2013 letter and enclosure could be determined to be a protest applicable to the June 2014 Prop. 218/budget cycle.

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The clerk is ordered to provide copies of this decision to both sides via US Mail. Mr. Alessio prepared and submitted a form of judgment consistent with the foregoing, which the court has signed.

IT IS SO ORDERED.

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[i] The court cites the previous briefing because only plaintiffs briefed exhaustion in their trial brief.

[ii] The court tentatively found, in the context of defendant's motion *in limine* (to have been argued in phase 2), that the Wisconsin consultant they selected this time is not qualified to testify.