

Appeal No. S294899

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

STEPHEN DREHER, et al.,

Plaintiffs/Appellants,

v.

CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER,

Defendant/Respondent.

On review from the Court of Appeal, Second
Appellate District, Division One, Case No.
B329610

After an appeal from the Superior Court of the
State of California, County of Los Angeles,
Case No. 19STCV07272, Honorable Mary H.
Strobel

**BRIEF BY AMICI CURIAE LEAGUE OF CALIFORNIA CITIES,
CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND
ASSOCIATION OF CALIFORNIA WATER AGENCIES IN
SUPPORT OF RESPONDENT**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under California Rules of Court, rule 8.208.

Dated: July 1, 2026

Respectfully submitted,

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**APPLICATION OF LEAGUE OF CALIFORNIA CITIES,
CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND
ASSOCIATION OF CALIFORNIA WATER AGENCIES**

The Association of California Water Agencies, League of California Cities, and California State Association of Counties (collectively “Amici”)¹ respectfully request permission under rule 8.520(f) of the California Rules of Court to file an amicus curiae brief in support of Respondent Los Angeles Department of Water and Power.

The League of California Cities (“Cal Cities”) is an association of 473 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Its members include cities that own, operate, regulate, or contract for water, sewer, refuse, and other local services funded through property-related fees and charges subject to Proposition 218. Cal Cities has a Legal Advocacy Committee, which comprises nineteen city attorneys from various regions of the State. This committee monitors litigation of concern to municipalities and identifies cases of statewide or nationwide significance, including the present matter.

California State Association of Counties (“CSAC”) is a nonprofit

¹ The Association of California Water Agencies, League of California Cities, and California State Association of Counties certify that no person or entity other than Amici and their counsel authored or made any monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

corporation whose members include the fifty-eight California counties. CSAC sponsors a Litigation Coordination Program that the County Counsels' Association of California administers and that the Association's Litigation Overview Committee oversees. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The Association of California Water Agencies ("ACWA") is the largest coalition of public water agencies in the country. It comprises approximately 470 public water agencies, which are collectively responsible for about ninety percent of the water delivered to cities, farms, and businesses in California. ACWA is dedicated to ensuring a high-quality water supply by sharing reliable scientific and technical information, tracking and shaping state and federal water policy, advocating for sound legislation and regulation, and facilitating cooperation and consensus among interest groups. ACWA's members depend on legally sound, financially stable, and clearly administrable rate structures to provide their services.

**STATEMENT OF THE INTEREST OF THE APPLICANTS AND
HOW THIS BRIEF WILL ASSIST THE COURT**

This case is of substantial statewide importance to Amici and their members. The Court granted review to determine whether "the methods adopted by the City of Los Angeles to set water budgets and allocate water supply costs result in tiered water rates that violate the proportionality

requirement of Article XIII D, section 6, subdivision (b)(3) of the California Constitution” (“Proposition 218”). The evidentiary standard that agencies must satisfy when adopting property-related fees is at the heart of this question. Amici write to offer their unique, real-world perspective on why the Opinion correctly identifies the standard.

Proposition 218 places the burden on agencies to demonstrate compliance with the Constitution. But, Proposition 218 is silent on the evidence necessary to meet that burden. Courts have considered the question, but the answers are both disparate and conflicting, as well as difficult and often impractical for agencies to implement. This case brings the issue directly to the Court, with the benefit of a highly developed and comprehensive record.

Amici urge the Court to adopt the answer reached in the Court of Appeal’s opinion (the “Opinion”) because the Opinion provides a practical, implementable, and administrable framework for establishing constitutionally defensible rates for water service. The Opinion reflects the reality that public agencies operate integrated water systems with commingled water supplies. Public agencies function based on reasonable projections, assumptions, and planning documents, within the limits of technologies that do not allow for absolute precision. Unlike prior, conflicting decisions, the Opinion answers the question of the required quantum of evidence with a practical framework for public agencies to meet

their evidentiary burden under Proposition 218. The Opinion recognizes that a court's obligation to exercise independent judgment does not equate to a wholesale dismissal of a local agency's expertise and methodology. The Opinion resolves conflicts in frameworks identified in existing precedent, some of which imposed overly rigorous and impractical evidentiary requirements not found in the Constitution.

In *Patz v. City of San Diego* (2025) 113 Cal.App.5th 225 and *Coziahr v. Otay Water Dist.* (2024) 103 Cal.App.5th 785, prior panels of the Court of Appeal promulgated evidentiary standards that risk transforming the constitutional requirement for proportionality into a practical quagmire. Under the *Patz* and *Coziahr* approach, even an agency that acts in good faith, retains an independent expert to prepare a detailed cost of service analysis and rate study, uses accepted ratemaking principles, and adopts rates designed to recover only the proportional cost of service, may still lose because a court concludes the administrative record does not contain a sufficient level of data—a level the Constitution does not call for. Importantly, neither *Patz* nor *Coziahr* clearly explain what would be sufficient to survive judicial scrutiny, and both decisions risk discounting the valuable, practical insight and expertise local agencies bring to cost allocation.

In contrast, the Opinion strikes a balance, tethered precisely to what article XIII D requires: a record demonstrating proportionality, not

mathematical exactness; a record supporting cost allocation, not molecule-by-molecule tracing of commingled water; and a workable burden of proof that protects ratepayers without stymying agencies' ability to fund essential services. Critically, the Opinion provides a workable framework that balances the critical Constitutional rights afforded to property owners under Proposition 218 with a practical pathway for agencies to establish and support constitutionally compliant water rates.

The proposed amicus brief will assist the Court by explaining that: (1) Proposition 218 requires proportionality, not evidentiary perfection; (2) the approach adopted in cases preceding the Opinion is unworkable and inconsistent with Proposition 218's mandates; (3) the lack of a clear evidentiary standard has adverse practical consequences; and (4) the Opinion identifies an evidentiary standard that correctly applies article XIII D, both legally and practically.

For these reasons, Amici respectfully request that the Court grant this application and file the accompanying amicus curiae brief.

Dated: July 1, 2026

Respectfully submitted,

BEST BEST & KRIEGER LLP

A handwritten signature in blue ink that reads "Lutfi Kharuf". The signature is written in a cursive style with a large, sweeping underline.

By: _____

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**[PROPOSED] AMICUS CURIAE BRIEF OF LEAGUE OF
CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF
COUNTIES, AND ASSOCIATION OF CALIFORNIA WATER
AGENCIES**

I. INTRODUCTION

Article XIII D, section 6 of the California Constitution (“Proposition 218”) requires public agencies to proportionately allocate the cost of providing water service. Proposition 218 places the burden of demonstrating compliance on the public agency imposing the property-related fee, but it is silent on *how* to demonstrate compliance. (Cal. Const., art. XIII D § 6, subd. (b)(5).) After more than a decade of conflicting court interpretations, there is still no clear answer to this fundamental question. The resulting ambiguity has spawned litigation resulting in significant damages against public agencies, and ultimately resulting in increased costs for ratepayers. Despite this litigation, public agencies—which do not generate a profit—are still left without clarity or direction on how to realistically establish defensible, constitutional, cost-based rates.

Appellate courts have answered this question with diverging approaches. Earlier precedent allowed flexibility in allocating costs. More recent decisions have pushed the evidentiary burden toward a level of precision that agencies cannot meet, even with tremendous financial and capital investment. This burden has become excessive in light of Proposition 218’s mandate of proportional cost allocation. This ongoing dispute over the

proof required to constitutionally justify rates is readily apparent in the tiered rate context.² Tiered rates are common: according to a July 2025 survey of 275 California urban water suppliers across 51 counties, approximately 60 percent use some form of tiered rate structure, with some agencies incorporating up to six tiers. (Water Resources Economics, 2025 Urban Water Supplier Rate Structure Survey (July 1, 2025) [survey of 275 urban water suppliers across 51 California counties; publication forthcoming Sept. 2026 at Water Resources Economics <<https://water-economics.com/>>].)

Tiered water rates allocate the incremental costs of higher demand to the higher usage levels that cause the system to incur those costs, while also encouraging efficient water use. However, recent decisions preceding the Opinion have treated any evidence short of real-time use metering, physical source tracking, or similarly granular proof as insufficient to substantiate increasing infrastructure costs as support for increasing tiered water rates—even when the agency relies on expert analysis, industry-standard cost allocation principles, and reasonable assumptions and projections. (*Patz v. City of San Diego* (2025) 113 Cal.App.5th 225, 281, 338-340 (dis. opn. of Menetrz, J.), reh’g denied (Aug. 14, 2025), as modified (Aug. 27, 2025), review denied (Oct. 29, 2025) (*Patz*); see also *Coziahr v. Otay Water District*

² Although tiered rates are used as an example here, the Court’s holding in *Dreher* has a potential to clarify, and adopt a workable proof standard, for other forms of rate structures.

(2025) 103 Cal.App.5th 785, 807, 816-819 (*Coziahr*).³) Further, *Patz* questions an agency's ability to support tiered water rates through incrementally expensive source-of-supply-costs, without infrastructure or technology that would provide for molecule-by-molecule tracing of commingled water from the source to the customer's pipe. (*Patz, supra*, at pp. 277-278.)

These decisions apply exacting requirements that diverge from historical reasonableness standards affording appropriate flexibility to public agencies in allocating costs. *Patz* and *Coziahr* further ignore the practical reality that public agencies operating complex, integrated water systems with commingled water supplies sized to meet maximum demands, are often in the best position to understand their water system and proportionately allocate cost. (See *Dreher v. Los Angeles Dept. of Water & Power* (2025) 116 Cal.App.5th 977, 990-992, 1027-1032, 1034-1036, review granted Mar. 11, 2026, S294899 (*Dreher*); see also *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 277 [ratemaking is "an essentially legislative act"].)

The result is a vacuum. Agencies do not have practical, administrable guidance on how to meet Proposition 218's evidentiary burden. The *Patz* dissent articulates the problem clearly: "The result is that, contrary to longstanding case law, today's majority opinion now makes it impossible for

³ These decisions also treat any reference to conservation as immediately suspect.

a public water utility in California to set tiered rates without violating [article XIII D] section 6(b)(3) [of the California Constitution].” (*Patz, supra*, 113 Cal.App.5th at p. 312.)

The Opinion rejects this approach, and corrects the harm articulated by the *Patz* dissent through a clear, administrable framework for supporting ratemaking decisions. (*Dreher, supra*, 116 Cal.App.5th at pp. 1026-1030.) The Opinion confirms that reasonableness, not exactness, is sufficient to meet the agency’s burden of demonstrating article XIII D’s proportionality requirement. (*Id.* at pp. 1026-1029.) Under the Opinion’s framework, agencies need not trace each molecule of water from the source to each parcel (*id.* at p. 1028), tier breakpoints need not be cost-justified where the rates within each tier do not exceed proportional service costs (*id.* at pp. 1030-1031), and infrastructure costs may be allocated to higher tiers, so long as rates reasonably represent the cost of providing service. (*Id.* at pp. 1035-1036).

Adopting the Opinion’s approach will provide much-needed clarity and certainty on the evidentiary standard necessary to establish constitutional rates and protect valuable ratepayer revenue from unnecessary litigation. The Opinion confirms that Proposition 218 requires proportionality, and that proportionality may be demonstrated through reasonable means. This approach recognizes that rate setting is not an exact science and a sensible degree of flexibility is necessary to fairly and proportionately allocate costs

of utility service. For these reasons, the judgment should be affirmed.

II. ARGUMENT

A. Proposition 218 Requires Agencies to Demonstrate Proportionality, Not Perfection

Public agencies are authorized to recover the cost of providing property-related services, including water service. Proposition 218 maintains that authority, but limits fees imposed for such services to the proportional cost of providing service to the parcel. (Cal. Const., art. XIII D, § 6(b).) Proposition 218 shifts the burden of demonstrating compliance to the public agency establishing property-related fees. Specifically, article XIII D, section 6 provides, “[i]n any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.”

These limitations protect ratepayers by ensuring that property-related fees do not become general revenue measures, and that public agencies support their ratemaking determinations with evidence. (See e.g. *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 650.) Amici *do not* ask this Court to dilute these protections. However, Proposition 218 is silent about what is required to meet this burden. Its text does not prescribe a specific ratemaking methodology, explain how to allocate costs or conduct a cost of service analysis, or specify what would constitute

sufficient evidence.⁴ A clear, practicable and administrable framework to exercise such authority within Proposition 218's limitations therefore benefits and protects ratepayers and public agencies alike.

Until the last few years, courts recognized that public agencies satisfied their burden of proof obligations under Proposition 218 if rates were reasonable and supported by the record. In other words, an agency need only rely on a reasonable calculation and allocation of costs to show that rates do not exceed the proportional cost of service. (*Patz, supra*, 113 Cal.App.5th at pp. 319-320 (dis. opn. of Menetrez, J.)) For example, the *Capistrano* court held that Proposition 218 allows tiered rates so long as “those rates reasonably reflect the cost of service attributable to each parcel.” (*Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1499, fn. 6 (*Capistrano*)). Similarly, the *Griffith* court acknowledged that cost allocation “is not a determination that lends itself to precise calculation,” and rates should be upheld if costs are allocated and apportioned in a “reasonable way” – “Proposition 218 does not require a more finely calibrated approach.” (*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 601, disapproved of on

⁴ By contrast, article XIII C, § 1(e), which governs other types of fees, establishes a “preponderance of the evidence” standard. With respect to assessments (which are distinct from property-related fees), article XIII D, § 4 requires “clear and convincing evidence” when an agency excludes publicly owned parcels from an assessment. No comparable language appears in section 6 regarding the property-related fees at issue.

unrelated grounds by *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191.)

Courts also recognized that cost allocation is inherently complex and beyond judicial expertise. (*Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 375 [“cost allocation methods used by governments present a subject beyond the trial court’s and our common experience and knowledge”].) Given this recognition, courts adopted an evidentiary standard that accepted reliance on reasonable evidence, public agency knowledge, industry standards, and expert analysis. (*Ibid.*)

Historic precedent interpreting Proposition 218 thus concluded that exact precision is not required, and instead reasonable cost apportionment is sufficient to meet constitutional limitations on rates. (*Griffith, supra*, 220 Cal.App.4th at p. 601 [“Apportionment is not a determination that lends itself to precise calculation”]; grouping similar users together and charging according to usage was a “reasonable way to apportion the cost of service”; and “Proposition 218 does not require a more finely calibrated apportion”]; *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 918 [“section 6 does not require perfection”]; *Howard Jarvis Taxpayers Assn. v. City of Roseville, supra*, 97 Cal.App.4th at p. 649 [section 6(b) fee or charge must “reasonably represent” the cost of providing service]; *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 923 [utility costs must be reasonably determined and recovered through rates

proportional to the cost of providing service to each parcel].)

B. *Patz* and *Coziahr* Diverge from the Historical Reasonableness Standard and Create Uncertain and Impractical Evidentiary Burdens Not Found in the Constitution

Patz and *Coziahr* diverge from this precedent and thereby create uncertainty. *Patz* and *Coziahr* impose an evidentiary standard of proof that requires exactitude, extends beyond proportionality, and leaves public agencies without sufficient guidance on what evidence will suffice to withstand judicial scrutiny. These decisions negate the technical and real-world expertise public agencies possess about how their own utility systems work, and how to allocate costs based on that knowledge and expertise.

Coziahr departs from precedent by abandoning reasonable cost allocations, in favor of exacting technical precision tying the tiered rates to each customer's usage characteristics. (*Patz, supra*, 113 Cal.App.5th at p. 319 (dis. opn. of Menetrez, J.)) ["Until recently, case law generally recognized that the standard of proof in this context is reasonableness. That is, the defendant utility must prove that, under a reasonable calculation and allocation of costs, rates do not exceed proportional costs"].) In *Coziahr*, the Court affirmed a judgment invalidating a water district's tiered rates for single-family residential customers because, in the Court's view, the district failed to provide sufficient data showing that the rates were proportional to the cost of service. (*Coziahr, supra*, 103 Cal.App.5th at pp. 800-803.) The

Court found the evidence lacking because the district relied on industry standards, reasonable estimates, and cost projections instead of precise time-of-use data that did not exist. (*Id.* at pp. 808-817.)

The impracticable level of detail required in *Coziahr* is evident in the Court’s discussion of the peaking factors. The district used reasonable estimates to allocate varying levels of capital and system costs incurred based on incrementally higher levels of usage. (*Id.* at 815.) The district contended that “data connecting customers’ seasonal patterns of use to peak demands” and “reasonable estimates” were sufficient to support its peaking analyses. (*Id.* at p. 817.) The Court rejected this evidence not because it was unreasonable, but because it lacked precise data.

Patz similarly affirmed a judgment invalidating residential water rates, concluding that the city failed to show its higher tiers were cost-proportional. (*Patz, supra*, 113 Cal.App.5th at pp. 275-278.) Like *Coziahr*, *Patz* applied a strict standard of proof, requiring precision instead of reasonableness. (*Id.* at pp. 267-268.) The impacts of this standard are apparent in three parts of the Court’s analysis.

First, the Court held that an agency must present evidence physically linking higher-tier consumption to the use of higher-cost water supplies before allocating those costs to those tiers. (*Patz, supra*, 113 Cal.App.5th at p. 246.) According to the Court, “because the City commingles all its water and delivers it to customers using the same infrastructure, the City cannot

ensure that higher-cost ‘alternative sources of supply’ [were] being delivered to customers whose use led to the City’s ‘greater investments’ in those sources of supply.’” (*Id.* at p. 254, citations omitted.) This level of evidentiary precision would require tracing each water molecule that passes through its system and is delivered to the customer’s pipe. This task is not feasible in a modern integrated water system in which water from multiple sources is blended, treated, stored, and delivered to customers through shared infrastructure. (*Dreher, supra*, 116 Cal.App.5th at pp. 1027-1028.)

Second, the Court held that an agency cannot justify tiered rates based on the allocation of peak costs to the higher tiers of consumption absent evidence connecting the challenged tiers to the actual time-of-use demand patterns that generate those costs. (*Patz, supra*, 113 Cal.App.5th at pp. 279-280.) The city asserted that it incurred additional costs to meet customer demands at peak times, and customers causing such peak demand ought to pay for those increased costs. (*Id.* at pp. 278-279.) The city did not track customers’ time of use because it did not have the “metering capability necessary to track ‘granular’ customer time-of-use.” (*Id.* at p. 279.) Instead, the city used reasonable estimates supported by industry guidelines to allocate peak costs to those customers who exhibit the greatest peaking behaviors. (*Ibid.*) The Court rejected this methodology on the theory that it was not based on “actual data,” but rather an assumption that higher users of water are more likely to be using water at peak times than average and below

average users because they use a higher total volume of water in a given billing cycle. (*Id.* at pp. 279-280.)

Third, the Court held that an agency must present evidence linking its tier breakpoints to differences in the costs of providing service before imposing higher rates above those thresholds. (*Patz, supra*, 113 Cal.App.5th at pp. 282-283.) The Court rejected the use of logical inferences from reasonable assumptions that above average water users place a higher demand on the system, thus driving system costs.

Patz and *Coziahr* ignore that many agencies lack the infrastructure, or capital to invest in the infrastructure, required to collect time-of-use data, trace molecules of water, and allocate costs accordingly. (*Dreher, supra*, 116 Cal.App.5th at pp. 1028.) Even if agencies had such infrastructure, it is unclear what benefit these improvements would provide when allocating cost. (*Ibid.*) These cases require impractical levels of precision that disregard local government expertise and the fact that cost allocation is inherently imprecise. (See, e.g., *Griffith, supra*, 220 Cal.App.4th at p. 601.) For example, if an agency seeks to recover the costs of incrementally more expensive water supplies through tiered rates, must it build separate conveyance infrastructure for each source of supply in order to demonstrate which customers actually receive specific water when charged a specific tiered rate? Similarly, if an agency seeks to recover costs associated with sizing its system to meet fluctuating demand levels, must it implement time-

of-use monitoring for water consumption to prove that higher-tier usage occurs during peak-demand periods?

Patz and *Coziahr* create a standard under which precise data is the only reliable way to prove proportionality, even though Proposition 218 and the Constitution nowhere mandate such precision. And they impose an exacting evidentiary burden that is simply not administrable in the context of real-world water operations. (*Patz, supra*, 113 Cal.App.5th at p. 341 (dis. opn. of Menetrez, J.) [“But in the meantime, requiring hourly time-of-use data means prohibiting tiered rates across the board. And that cannot be correct, because *Capistrano* recognizes that tiered rates not only have long been constitutional but are actually “a good idea”].) *Patz* and *Coziahr*’s departure from the historical reasonableness standard should be rejected.

C. The Lack of Clear, Administrable Guidance has Real-World Consequences for Public Agencies and Their Rate Payers

Public agencies, and trial courts presiding over rate challenges, need an administrable evidentiary framework to determine compliance with Proposition 218. This framework must provide a balanced approach that protects ratepayers from unlawful charges while ensuring agencies can continue to provide vital services as needed. Without clear guidance, agencies acting in good faith and relying on practical experience, expert analysis, and industry standards to identify and proportionately allocate costs may still be found to have violated Proposition 218. In practice, this creates

significant hardship for public agencies and potentially a less accurate allocation of costs among rate payers.

The lack of a clear, administrable answer to the question of what an agency must prove has real-world consequences. For example, a California jurisdiction⁵ (“Jurisdiction”) with almost exclusively single-family residential customers established tiered water rates in 2022. The Jurisdiction has a single source of supply; however, its users have hugely disparate levels of usage, with its highest users using nearly 1000 times more water in summer months than the system’s average user. This means that in order to provide reliable service to everyone on high demand days, the Jurisdiction’s water system and infrastructure must be sized to meet the highest levels of demand. The Jurisdiction used automated meter reading—one of the most advanced meter reading and data collection technologies available to public agencies⁶ to collect a vast amount of data, and based on such data, the Jurisdiction set and implemented tiered water rates. The Jurisdiction’s tiers allocated the higher costs associated with operating and maintaining the larger water system to high water users who place more relative demand and

⁵ Because this litigation is ongoing, and because the Jurisdiction is in the midst of adopting new rates for water service, the Jurisdiction has asked to remain anonymous.

⁶ See Improving Water Management Using Advanced Metering Infrastructure: A Guide for Facility Managers (available at <https://www.epa.gov/system/files/documents/2022-09/ws-commercial-ami-guide-facility-managers.pdf>, last accessed June 24, 2026).

load on the water system.

Two of the Jurisdiction's largest water users challenged the water rates, arguing that without precise data tying time-of-use to additional infrastructure costs, the Jurisdiction's rates violate Proposition 218. The Jurisdiction relied on its own knowledge and expertise of how its water system operates, how costs are incurred, and the primary drivers for the level of infrastructure necessary to provide service. The Jurisdiction further used the most cutting-edge technology available—AMI data⁷—to establish demand factors for the purpose of allocating infrastructure costs. The challengers presented no evidence at all, much less contrary expert evidence, to dispute the reliability of the Jurisdiction's data. However, based on the holdings in *Patz* and *Coziahr*, the Jurisdiction's data was still found insufficient to support the tiered rates and withstand the Trial Court's independent review.

The Jurisdiction consequently shifted from tiered water rates to a uniform rate structure, even though (a) the Jurisdiction's system includes storage and distribution infrastructure designed to meet the highest levels of demand, and (b) the vast majority of ratepayers now pay more for water. The Jurisdiction is receiving threats of litigation on the grounds that a uniform

⁷ Advanced metering infrastructure (AMI) refers to smart meters and related systems that collect water-use data at regular intervals, potentially including peak-period usage data. Conventional meters generally do not provide that level of time-of-use information.

rate structure improperly shifts infrastructure costs to average and below-average users. This is exactly the risk the *Patz* dissent warned of:

[*Patz*] presented the opportunity to clarify the law in this area and thereby make it easier for trial courts to dispose of wholly meritless lawsuits like this one. Unfortunately, the majority opinion has not only missed that opportunity but also has achieved the opposite result, making it impossible for California public water utilities to defend tiered rates, and arguably impossible to defend any rates at all. For all of the foregoing reasons, I respectfully dissent.

(*Patz, supra*, 113 Cal.App.5th at p. 348 (dis. opn. of Menetrez, J.).)

Amici offer this to illustrate the challenging circumstances within which public agencies currently operate. The uncertainty regarding how to meet Proposition 218's evidentiary burden has placed both public agencies and the reviewing courts in an untenable position. The Opinion resolves that uncertainty and provides the guidance that agencies and courts need.

D. The Opinion Provides a Workable, Administrable Framework for Defensible Rates Based on Reasonableness

The Opinion affirms that Proposition 218 allows agencies to rely on reasonable methodologies and informed professional judgment when making ratemaking decisions. The Opinion upheld water rates based on local expertise and rate-making policy, reasonable estimates, projections, expert analysis, and industry standards. (*Dreher, supra*, 116 Cal.App.5th at pp. 991-992, 995, 1024-1026, 1035-1036.) The Opinion reconciles conflicting case law by confirming that there is more than one reasonable method to apportion cost, that agencies do not need perfect data, and that

property-related fees are defensible so long as they reasonably represent the cost of service. The Opinion simultaneously rejects judicial interpretations that impose uncertain and unworkable compliance standards untethered to the text and purpose of the constitutional provisions at issue. (*Id.* at pp. 1026-1029.)

The Opinion demonstrates how this standard works in practice: first, by identifying an evidentiary standard that satisfies Proposition 218's proportionality requirement, while still providing a workable pathway for agencies to meet that standard (*Dreher, supra*, 116 Cal.App.5th at pp. 1032-1034); second, by recognizing agency discretion to set tier breakpoints (*id.* at pp. 1030-1032); and third, by protecting lower-use customers from subsidizing higher use customers. (*Id.* at pp. 1029-1030, 1036.)

Amici address each of these findings not to advocate for tiered rates as a matter of policy, or to argue tiered rates are the only correct method of complying with Proposition 218. To the contrary, Proposition 218 does not mandate any particular rate structure, so long as costs are reasonably apportioned and supported by evidence. (*Dreher, supra*, 116 Cal.App.5th at p. 1026; *Griffith, supra*, 220 Cal.App.4th at p. 601; *Morgan, supra*, 223 Cal.App.4th at p. 918.) However, the Opinion's analysis of the correct standard of proof demonstrates how rate setting should operate in practice and, by extension, how it would govern the justification of any rate structure under Proposition 218. Regardless of what rate structure an agency chooses,

the Opinion provides an administrable framework cognizant of practical realities facing public agencies, and accordingly, the judgment, and the Opinion's approach, should be affirmed.

1. The Opinion's Evidentiary Standard Is Practical and Operable.

The Opinion identified a workable evidentiary standard that acknowledged the complex reality of Los Angeles Department of Water and Power's ("LADWP") water system.

LADWP commingles its water supply and distributes water to customers through shared infrastructure. LADWP relies on a formula that takes into account the unit price of each source of supply assigned to a tier, and the amount of projected customer demand for water that a source can meet within the tier. The unit cost, in turn, is based on forecasted hydrologic supply and is periodically adjusted to take into account changed circumstances. (*Dreher, supra*, 116 Cal.App.5th at pp. 994-995.) "LADWP mathematically assigns the sources of supply to the tiers (starting with the lowest cost source) because it is impossible, given the existing infrastructure, to actually trace water from a source of supply (LA Aqueduct, groundwater, MWD, recycled water) to each individual customer's residence." (*Id.* at p. 995.)

As such, LADWP relies on a reasonable, evidence-based methodology to allocate cost of water supply to tiers. This methodology

takes into account the practical reality that California water systems are integrated systems. Agencies do not deliver lower-cost water through one set of pipes when charging a lower tier rate and higher-cost water through other pipes when charging higher tier rates. Supplies are commingled, infrastructure is shared, and rates must be set prospectively before water is delivered and actual future demand and future costs are known. (*Dreher, supra*, 116 Cal.App.5th at pp. 991-992, 1027-1028, 1032-1034.) To establish rates based on molecule-by-molecule tracing, an agency must build “impossibly complex and inefficient infrastructure that isolates each source of supply for separate water quality treatment; delivers each source of supply to residential customers through separate piping; and records the amount of water each parcel uses from each source of supply.” (*Id.* at p. 1028.) Even if such a system could realistically be constructed, it would cause customer rates to skyrocket in order to pay for additional, inefficient infrastructure. (*Ibid.*)

In upholding LADWP’s apportionment methodology, and rejecting the level of precision required in *Patz*, the Opinion reconciles prior case law by confirming Proposition 218 “requires proportionality not exactness.” (*Dreher, supra*, 116 Cal.App.5th at p. 1027.) Rates withstand scrutiny so long as they pass on the “incrementally higher costs of expensive water to incrementally higher users” in a manner that “reasonably represent[s] the cost of providing service.” (*Id.* at pp. 1025, 1028, citations omitted; *Patz*,

supra, 113 Cal.App.5th at p. 268; *KCSFV I, LLC v. Florin County Water Dist.* (2021) 64 Cal.App.5th 1015, 1029; *Capistrano, supra*, 235 Cal.App.4th at p. 1503.)

The Opinion does not give public agencies free rein. It provides needed guidance and a workable framework for setting defensible rates that takes into account the realities of operating a water system. Agencies must still analyze the cost of service, build a record, and demonstrate proportionality. (*Dreher, supra*, 116 Cal.App.5th at pp. 1024-1026.) The Opinion confirms that Proposition 218 compliance *can* be shown through reasonable, evidence-based ratemaking methods and cost allocations. It preserves the requirement of cost-based proportionality while rejecting evidentiary demands that integrated water systems cannot realistically satisfy without substantial infrastructure changes.

The resulting policy benefit from the Opinion’s approach is substantial. The California Constitution does not mandate a specific rate structure, although it could have. (*Patz, supra*, 113 Cal.App.5th at p. 316 (dis. opn. of Menetrez, J.) [“It follows that uniform rates, based on uniform cost calculation and allocation, are not required by section 6(b)(3)—tiered rates based on tiered cost calculation and allocation are permissible. But by the same token, tiered rates based on tiered cost calculation and allocation are not required by section 6(b)(3) either—uniform rates based on uniform cost calculation and allocation are permissible as well.”].)

California water agencies serve different communities, rely on different sources of supply, and operate systems with different infrastructure constraints. Proposition 218 leaves room for this variation: agencies may choose uniform rates, tiered rates, or other lawful structures, provided the resulting charges are supported by evidence and remain proportional to the cost of service. The Opinion preserves local discretion while giving agencies a practical path for compliance, one that protects ratepayers without turning Proposition 218 into a judicial mandate for a single rate design or an unattainable standard of proof.

2. The Opinion Correctly Preserves Agency Discretion to Set Tier Breakpoints

The Opinion affirms that considering water-use budgets to set parcel-specific tiers is consonant with Proposition 218. (*Dreher, supra*, 116 Cal.App.5th at p. 1031.) This holding correctly recognizes that there is no single best approach to setting water rates in California, and that public agencies are often in the best position to determine how to reasonably allocate their particular costs of service. Additionally, the Opinion preserves local discretion to design rate structures and tier breakpoints that effectuate policy goals for water use efficiency while ensuring cost-based, proportional rates. (*Ibid* [“As the dissent in *Patz* explained, section 6(b)(3) does not impose such a requirement [for cost-based tier breakpoints]: ‘As long as rates do not exceed proportional costs, section 6(b)(3) is satisfied. In fact, the tier

breakpoints can be completely arbitrary without violating section 6(b)(3).”].) Here, the Opinion found the rates constitutional because the agency calculated the cost of water service to each tier.

This flexibility is especially important considering California’s water use efficiency goals and conservation policies. California law has long recognized that water resources are limited and must be put to reasonable and beneficial use. (Cal. Const., art. X, § 2.) In recent years, the Legislature has reinforced that principle by enacting the “Making Water Conservation a California Way of Life” framework, which directs urban water suppliers to achieve greater long-term efficiency through locally implemented water-use objectives and conservation measures. (Wat. Code, § 10609 et seq.)

Importantly, the consequences of failing to satisfy these state conservation requirements fall on local agencies. Urban water suppliers must calculate and report their water-use objectives and actual use to state regulators, prepare and implement plans to improve performance when objectives are not met, and remain subject to oversight and enforcement by the State Water Resources Control Board and the Department of Water Resources. (Wat. Code, §§ 10609.20-10609.28.) The Legislature has authorized the State Water Resources Control Board to enforce these requirements through administrative enforcement proceedings and civil liability provisions applicable to violations of the conservation framework. (See Wat. Code, §§ 10609.30–10609.34.) Thus, while state law establishes

conservation mandates, it is local agencies that bear the operational and legal responsibility for achieving them. Tiered rates are an effective means of encouraging efficient use and managing demand before additional, more expensive, supplies must be acquired, conveyed, stored, and treated.

3. The Opinion Identifies Evidentiary Standard Sufficient to Support Allocation of Incrementally Higher Water Supply Costs

The Opinion agrees with *Capistrano's* reasoning that an agency may, and in some circumstances should, pass on “the incrementally higher costs of expensive water to incrementally higher users” through tiered rates, so long as the agency can establish the cost basis to deliver water in each tier. (*Dreher, supra*, 116 Cal.App.5th at p. 1033.)⁸

The Opinion’s treatment of peak pumping and storage (“PP&S”) costs illustrates this point. LADWP did not allocate all pumping and storage costs to higher tiers. It allocated base pumping and storage costs across all tiers and assigned only peak pumping and storage costs to Tiers 3 and 4. (*Dreher, supra*, 116 Cal.App.5th at pp. 995, 1034-1036.) LADWP identified the marginal cost of each element of pumping and storage, including distribution

⁸ Tiered rates allow agencies to assign the incremental costs of higher demand—such as more expensive imported supplies, additional supply programs, and infrastructure capacity needed to serve higher-volume usage—to the levels of use that create those costs. Without tiered rates, agencies would be pushed toward setting uniform rates that spread those incrementally higher water-supply costs across *all users, including lower-use customers whose consumption did not make those costs necessary, even where the record demonstrates varying levels of demand on infrastructure.*

storage plant, storage operations and maintenance, pumping operations and maintenance, and pumping plant investment. (*Id.* at p. 1035.) Customers paying the higher tiered rates rightfully bore these costs. These costs were not identified based on time-of-use metering, but rather, on reasonable evidence demonstrating relative levels of demand and associated capital requirements. (*Ibid.*) The Opinion upheld that approach, concluding that substantial evidence supported LADWP's allocation of these costs because the City tied those costs to the overall pumping and storage capacity needed to serve customers with usage in Tiers 3 and 4. (*Id.* at pp. 1035-1036.)

This holding is significant for public agencies statewide. Customers expect that water will come out when they turn their tap. Consequently, water systems must be sized and have adequate water supplies to satisfy peak demand at all times. Water systems could often be sized smaller and require fewer, less costly, water supplies but for the water usage of a water agency's higher-tier water users. The Opinion recognized that if higher levels of use require additional supply, storage, pumping, or capacity, Proposition 218 allows agencies to allocate those incremental costs to the usage levels that cause them when the record supports that allocation. This methodology comports with *Capistrano*'s guidance to ensure below-average users do not pay for infrastructure their levels of usage do not require. (*Capistrano, supra*, 235 Cal.App.4th at p. 1503.)

III. CONCLUSION

Recent decisions like *Patz* and *Coziahr* sharply departed from the historical reasonableness standard by imposing an evidentiary standard requiring precision and exactitude. These standards are unworkable, impractical, and are not mandated by the Constitution. The Opinion corrects that departure. Under the Opinion, agencies continue to bear the burden of proof, but agencies may meet their evidentiary burden by relying on reasonable assumptions and methodologies, public agency knowledge, expert analysis, and industry standards. But they need not satisfy an impossible tracing requirement, build duplicative infrastructure, or abandon water budgets tailored to local conditions, which the precision demanded by *Patz* and *Coziahr* would necessitate.

The Opinion's administrable evidentiary standard allows cities, counties, and water agencies to comply with Proposition 218 while continuing to manage drought, supply reliability, infrastructure capacity, and conservation in a manner that protects lower use customers from subsidizing the costs caused by higher levels of demand. The judgment should be affirmed and the Opinion's approach adopted.

Dated: July 1, 2026

Respectfully submitted,

BEST BEST & KRIEGER LLP

A handwritten signature in blue ink that reads "Lutfi Kharuf". The signature is written in a cursive style with a large, sweeping underline.

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c)(1), I certify that:
(1) the foregoing proposed amicus brief were filed with this Court on July 1, 2026, contains of 5,642 words, according to the word count feature of the computer program used to prepare this brief.

Dated: July 1, 2026

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PROOF OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071.

On July 1, 2026, I served a copy of the within document(s):

**BRIEF BY AMICI CURIAE LEAGUE OF CALIFORNIA CITIES,
CALIFORNIA STATE ASSOCIATION OF COUNTIES, AND
ASSOCIATION OF CALIFORNIA WATER AGENCIES IN
SUPPORT OF RESPONDENT**

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Executed on July 1, 2026, at Valencia, California.

A handwritten signature in blue ink that reads "Rochelle Burris". The signature is written in a cursive style.

ROCHELLE BURRIS

STEPHEN DREHER, et al. v. CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER
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