SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

COALITION OF SENSIBLE TAXPAYERS, DOUG KELLY, GLORIA RASHTI AND MARI ROBINSON, ON THEIR OWN BEHALF AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, Petitioners and Plaintiffs, v. MARIN MUNICIPAL WATER DISTRICT, AND THE BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT, SOLEY IN THEIR REPRESENTATIVE CAPACITIES, AND DOES 1 THROUGH 100 , Respondents and Defendants.	Case No.: CIV 1903160 **ORDER AFTER HEARING** **HON. ANDREW E. SWEET**

PROPOSED ORDER:

Respondents Marin Municipal Water District and The Board of Directors of The Marin Municipal Water District ("Respondents") Motion to Quash Third Amended Notice of Second PMQ Deposition Duces Tecum ("Deposition Notice") and for Protective Order is **DENIED**. (Code Civ. Proc., § 2025.420, subd. (g).)

The Areas of Inquiry covered by Petitioners' Deposition Notice fall within the permissible scope of discovery because they are reasonably calculated to lead to the discovery of admissible evidence." (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481, 1490;

Code Civ. Proc., § 2017.010.) The Court further finds that the subject matter of the discovery sought through Petitioners Second PMQ Deposition Duces Tecum ("Deposition"), concerns the constitutionality of the assessment at issue, over which courts are to exercise their independent judgment and are not limited to the administrative record. (*Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542, 562-563.[1])

The Court further finds that with respect to the specific areas of inquiry relevant to Petitioners' Deposition, that Petitioners had an inadequate administrative remedy and therefore were not required to exhaust that remedy, which was inadequate. (*Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542, 553; 555; 557; 566.) In *Hill RHF Housing Partners, L.P., supra* 287 Cal.Rptr.3d 542, the California Supreme Court specifically held that in Proposition 218 assessment cases, the opportunity to participate in a public hearing did not constitute a "clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties" because while Proposition 218's requirement that "objections be *considered* created no legal obligation upon an agency to actually *respond* to whatever comments it might receive," and that "nothing in Proposition 218 or the legislation implementing it defines *what level* of consideration must be given." (*Hill RHF Housing Partners, L.P., supra* 287 Cal.Rptr.3d 542, 553; 555; 557; 566.)

Finally, even if Petitioners had not been categorically excused from exhausting administrative remedies (based on their claims of unconstitutionality and inadequate administrative remedies below), the Court finds that the discovery sought by Petitioners' Deposition within the limited scope of *permissible* extra-record discovery articulated in *Western States Petroleum Association v. Superior Court* (1995) 9, Cal.4th 559 because the information sought (1) existed *before* the agency made its decision, and (2) was not possible in the exercise of reasonable diligence to present this evidence to

[1] *Hill* was published after the oral argument in this case. However, the parties agree that the court may consider *Hill* when deciding the issue in this motion.

the agency *before* the decision was made so that it could be considered and included in the administrative record. (*Western States Petroleum Association v. Superior Court* (1995) 9, Cal.4th 559, 578.)

REQUESTS FOR JUDICIAL NOTICE

Petitioners' requests for judicial notice are granted as to exhibits 1-8, which are records of this Court. (Evid. Code, § 452, subd. (d)(1).)

Respondents' original requests for judicial notice in support of their motion to quash are granted as to exhibits 1-2, which are records of this Court. (Evid. Code, § 452, subd. (d)(1).)

OBJECTIONS TO EVIDENCE

Petitioners' Objection to Respondents' Declaration of Non-Resolution is sustained only with respect to paragraph 5 and the attachment of Discovery Facilitator Feeney's letter. Petitioners' objections are overruled as to the remainder of Respondents' Declaration of Non-Resolution in connection with paragraphs 1-4.

BACKGROUND

This case involves a petition for writ of mandate calling into question both the legitimacy and constitutionality of water rate increases that Petitioners allege are being calculated in an unconstitutional manner, and which Petitioners claim is generating revenue to pay for services that are not water-related in violation of Government code section 66013.

Central to this litigation is Petitioner's contention that Respondents' Notice did not accurately or completely describe the manner in which the rate increase would be calculated or provide the public with information concerning how funds and revenues obtained from the rate increase would be spent.

Petitioners challenge the adequacy of the assessment's related Notice, the assessment's constitutionality and legality in connection with Government Code section 66013, whether the required procedures were followed in calculating the assessment, and the adequacy of administrative remedies.

In the Court's prior ruling concerning a different motion by Petitioners requesting extra-record discovery from Respondent, the Court denied Petitioner's request for extra-record discovery because Petitioners failed to identify the specific discovery to which it sought further responses. (Order After Hearing (June 14, 2021) p.2: 24-26 ("June 14, 2021 Order").) The only information Petitioners provided regarding the nature of discovery sought in connection with that prior motion was that it was seeking to conduct discovery to obtain evidence to prove that the District's decision was incorrect, misplaced, and/or not supported by the facts or evidence. (Petitioner's MPA pp. 2:18-21; 4:3-4; 4:23-5:2; 6:8-10.) Based on this vague description of discovery sought, which provided no parameters limiting the extra-record discovery sought by Petitioners, the Court denied this request under *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 ("*Western States*"), finding that Petitioner's vague characterization of the extra-record discovery sought did not meet the narrow requirements articulated in *Western States* for allowing extra-record discovery in connection with the Court's review of the administrative proceedings below. (June 14, 2021 Order p. 5: 3-17.)

On October 8, 2021, Petitioners brought a subsequent motion to compel supplemental responses to discovery. (Register of Actions ("ROA").) However, the Court denied this motion because it was untimely. (Court's Tentative Ruling dated October 8, 2021, pp. 1-2.)

In contrast to their prior discovery motion, Petitioners have included a high level of specificity regarding the areas of inquiry to be covered by the Deposition at issue in the present motion. This

level of specificity has provided the Court with a meaningful basis to apply relevant caselaw in determining whether the specific extra-record discovery sought should be permitted.

After full briefing and the December 10, 2021 argument in this case, on December 20, 2021, the California Supreme Court provided further guidance by granting review in *Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542. In that case, the high court held that the opportunity to participate in an administrative hearing prior to legislative action in a Proposition 218 case, was an inadequate administrative remedy because Proposition 218 only required the agency to consider grievances presented, but did not require the agency to respond to or resolve them. (*Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542, 553; 555; 557; 566.)

DISCUSSION

I. Petitioners' Third Amended Notice of Second PMQ Deposition Duces Tecum Falls Within the Permissible Scope of Discovery (Code Civ. Proc., § 2017.010)

The Court recognizes that "discovery is not limited to admissible evidence." (*Davies v. Superior Court* (1984) 36 Cal.3d 291, 301.) The right to discovery includes an entitlement to learn "the identity and location of persons having knowledge of any discoverable matter." (Code Civ. Proc., § 2017.010.) In fact, C.C.P. § 2017.010 authorizes the production of any nonprivileged document that "is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481, 1490; Code Civ. Proc., § 2017.010.) For discovery purposes, information is relevant if it "might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611.) Therefore, statutes governing discovery must be construed liberally in favor of disclosure unless the request is clearly

improper by virtue of well-established causes for denial. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.)

As a preliminary matter, the Court finds that Petitioners' Deposition Notice and corresponding document requests fall within the broad scope of permissible discovery because the method used for rate calculations and information regarding how revenue from the rate increase will be spent are relevant to a determination of whether the assessment violated Government Code section 66013 and whether it was constitutional, which are central issues to this litigation.

II. Petitioners' Proposed Areas of Inquiry Do Not Seek Legal Conclusions

Addressing Respondents' contentions that the Deposition Notice's areas of inquiry only call for legal conclusions, the Court finds that the method used for the rate calculations and information regarding how revenues from the rate increase will be spent, are facts and not conclusions of law.

Specifically, the areas of inquiry touch on how Respondents funded stewardship services in the past and whether any portion of the revenues generated by the rate increase would be used to pay for these other stewardship services other than those related to water, which directly implicates the constitutionality of the rate increase and the issue of whether or not the rate increase violates Government Code section 66013.

III. Document Requests Corresponding to Second PMQ Deposition Are Not Barred By Prior Attempt to Obtain Them By Other Means

Despite the fact that Petitioners filed a prior untimely motion to compel involving overlapping documents sought in connection with the present Deposition Notice, nothing in either Code of Civil Procedure section 2025 or section 2031 suggests that seeking documents under one statutory procedure bars a litigant from seeking the same documents under another. (*Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 997.) This is especially true in the present case where Respondents have

not shown that they have produced the requested documents in response to Petitioners' prior request for production.

IV. Court Exercises Independent Judgment Regarding Constitutionality of Agency Action

In the present case, Petitioners dispute the constitutionality of the rate increase imposed by Respondents. They contend that Respondents' method of rate calculation violates Government Code section 66013 as well as the proportionality requirements and limitations on how rate increase revenues can be used that are imposed by the Constitution itself.

Where the constitutionality of an assessment is at issue, courts are to exercise their independent judgment and are not limited to the administrative record. (*Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542, 562-563 ("*Hill*").)

Therefore, since Petitioners raise the issue of constitutionality in their challenge to the assessment, the Court finds that they are not limited to administrative remedies since the Court has authority to address the issue of constitutionality independently of specific actions taken by the administrative agency in considering Petitioners' grievances at the relevant administrative hearings and proceedings. (*Hill RHF Housing Partners, L.P., supra,* 287 Cal.Rptr.3d at pp. 562-563.)

To the extent that the rate increase itself were found to be unconstitutional, notwithstanding the agency's discretion to approve most measures, such approval itself would be void. (*Lejins v. City of Long Beach* (2021) 287 Cal.Rptr.3d 208, 221; *Malott v. Summerland Sanitary District* (2020) 55 Cal.App.5th 1102, 1108-1109; *Plantier v. Ramona Municipal Water District* (2019) 7 Cal.5th 372, 376; 388.)

Therefore, Accordingly, the Court is entitled to consider evidence outside of the AR and beyond the limited confines of *Western States,* in a case such as this where constitutionality and legality are implicated by Petitioners' claims. (*Ibid.*)

V. An Inadequate Administrative Remedy Is Not Subject to Exhaustion Requirement

Addressing Proposition 218 assessments in particular, the California Supreme Court in *Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2021) 287 Cal.Rptr.3d 542, recently underscored that Proposition 218's requirement that "objections be *considered* created no legal obligation upon an agency to actually *respond* to whatever comments it might receive, and that "nothing in Proposition 218 or the legislation implementing it defines *what level* of consideration must be given." (*Id.* at p. 557.) Therefore, it concluded that the opportunity to participate in a public hearing prior to legislative action did not constitute an administrative remedy, and that no exhaustion requirement could be imposed since it found there was no "clearly defined machinery for the submission, evaluation and resolution of complaints by aggrieved parties." (*Id.* at pp. 553; 555; 566.)

In the present case, similar to that in *Hill,* Petitioners were provided with the inadequate administrative remedies under Proposition 218 for challenging the constitutionality of Respondents' proposed rate increase assessment, which did not adequately provide a mechanism to resolve Petitioners' grievances regarding how the rate increase was calculated, how revenues from the rate increase would be spent, and whether its imposition was constitutional. The inadequacy of procedures below further deprived Petitioners of any meaningful opportunity to raise the issues central to the present litigation because Respondents' Notice was defective in that it omitted material details regarding how the rate increase would be calculated and how funds from the increase would be spent.

As the Court concludes that administrative remedies provided by Respondents were inadequate to address Petitioners' grievances, the Court finds that Petitioners in this case are not subject to the exhaustion requirement. Accordingly, with respect to the issues covered by the proposed Second PMQ deposition duces tecum at issue, the Court finds that Petitioners' discovery should not be limited to the AR.

VI. Petitioners' Deposition Notice and Corresponding Document Requests Fall within the Narrow Exception Articulated in *Western States*

Finally, the Court finds that Respondents have not shown that the topics of inquiry involved in the Second PMQ deposition duces tecum at issue (which include Petitioners of stewardship and Government Code section 66013 claims), were raised or even implicated by Respondents' Notice, which Petitioners contend was deficient.

Based on the Court's review of Respondents' Notice, the Court finds that information regarding these topics were not raised at the administrative proceedings because Respondents' Notice omitted them, thereby precluding Petitioners from learning of these issues until after the rate increase was approved.

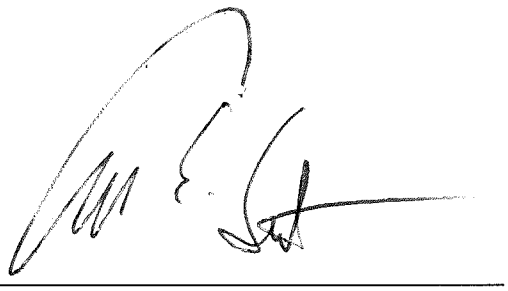
Proposition 218 specifically states that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting [the] local government revenue and enhancing taxpayer consent." (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892, 906.) In so doing, it established substantive requirements for the imposition of property-related fees and shifted to agencies the burden to demonstrate the lawfulness of the challenged fees. (*Id.* at p. 905.) To the extent that an agency did not provide complete or accurate details to the taxpayers whose approval is required for a proposed rate increase, the Court finds that Petitioners have the right to challenge any approval obtained on this basis.

Even in cases where constitutionality is not an issue and even where the adequacy of administrative remedies has not been challenged, the court in *Western States Petroleum Association v. Superior Court* (1995) 9, Cal.4th 559 (*"Western States")* stated that extra-record evidence could be sought in discovery as long the information sought: (1) existed *before* the agency made its decision, and (2) was not possible in the exercise of reasonable diligence to present this evidence to the agency

before the decision was made so that it could be considered and included in the administrative record. (*Western States Petroleum Association v. Superior Court* (1995) 9, Cal.4th 559, 578.)

In the present case, because the Court finds that Respondents' Notice was incomplete and failed to provide adequate material details regarding how the rate increase would be calculated and omitted information regarding how revenues generated from the increase would be spent, the Court finds that this information meets the stringent *Western States* requirements because Petitioners could not have raised these issues prior to the agency's approval of the assessment because Respondents' Notice omitted material details that would otherwise have placed them on notice.

DATED: January 31, 2022



ANDREW E. SWEET
Judge of the Superior Court

MARIN COUNTY SUPERIOR COURT
3501 Civic Center Drive
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San Rafael, CA 94913-4988

COALITION OF SENSIBLE TAXPAYERS, ET AL. vs. **HECTOR COSIO KRAUSS, ET AL.**	CASE NO. CIV 1903160 **PROOF OF SERVICE BY FIRST CLASS MAIL** ***Code of Civil Procedure Sections 1013a and 2015.5***

I am an employee of the Marin County Superior Court. I am over the age of 18 years and not a party to this action. My business address is 3501 Civic Center Drive, Hall of Justice, San Rafael, California.

On 2-1-2022, I served the following document(s): **ORDER AFTER HEARING** in said action to all interested parties, by placing the envelope for collection and mailing on the date shown thereon, so as to cause it to be mailed on that date following standard court practices. I am readily familiar with the court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Rafael, California

JAMES M. KIM
Court Executive Officer

By: S. HENDRYX
DEPUTY