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FILED - Big Bear District
SAN BERNARDINO COUNTY
Superior Court

NOV 20 2007

By Christine Norman
Christine Norman, Clerk

Plaintiff's Attorney

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

JAMES R. MCLEAN,

Plaintiff,

vs.

**CITY OF BIG BEAR LAKE,
a Municipal Corporation;
and DOES 1 - 10,**

Defendants.

) Case No: CIVMS 700195
)
) COMPLAINT FOR DAMAGES
) AND INJUNCTIVE RELIEF
)
) I. Violation of California Constitution
) Article XIII D
)
) II. Violation of United States Constitution
) 14th Amendment Equal Protection
)
)
)
)
)

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS:

Plaintiff, James R. McLean, now brings this lawsuit against Defendant,
City of Big Bear Lake, a Municipal Corporation, and Does 1 - 10, alleging
violations of the California Constitution Article XIII D, and the U.S. Constitution
14th Amendment Equal Protection Clause, seeking damages and injunctive relief.

(7) DWP delivery fees shall not exceed the “cost of service” attributable to the taxpayer’s parcel. California law strictly requires that DWP delivery fees must be based solely on the “cost of service.” [See Calif. Const. Art. XIII D Sec. 6(b)(3)]

(8) In Big Bear Lake, delivery fees are NOT based on “cost of service;” instead, delivery fees are based on zoning! DWP delivery fees depend on whether the parcel in question happens to be zoned “residential” or “commercial.”

(9) It is inherently unfair for DWP to charge one fee to “residential” parcels and another to “commercial,” and even more unfair to charge a “usage increase” fee to “commercial” customers only. Just because Plaintiff’s parcel happens to be zoned “C,” he must pay different water rates *and* a “usage increase” fee.

(10) DWP fees are unlawful because, under Prop. 218, water delivery fees must be based on the actual “cost of service” to deliver water to the taxpayer’s parcel—NOT on whether the taxpayer’s parcel happens to be zoned “R” or “C.”

(11) DWP’s “cost of service” is the same for everyone because everyone receives the exact same delivery service. *There’s only one water system in Big Bear Lake!*

Because DWP delivers water via the same system, DWP overhead costs are the same for everyone. Everyone gets water that originates from the same source; it’s treated with the same chemicals, pumped to the same tanks, and delivered through the same pipes. Plaintiff’s lawsuit is based on the indisputable fact that the “cost of service” to deliver water is the same for everyone in Big Bear Lake.

1 (12) In Big Bear Lake, there's no difference between "residential" water delivery
2 and "commercial" water delivery. The delivery costs are the same—and the water
3 tastes the same—regardless of whether DWP delivers to "R" or "C."

5 (13) With just one system delivering water to all users, the "cost of service" is,
6 not surprisingly, the same for all users; and knowing the "cost of service" is the
7 same, one would naturally expect that all users would be charged the same fees
8 because, under Prop. 218, fees must be based on the "cost of service."
9

11 (14) Ironically, the reason DWP is anxious to raise fees is because Big Bear Lake
12 citizens have dutifully conserved water! But because water conservation has been
13 so successful, water use is down—which means that DWP billing is down—which
14 means that DWP revenues are down! And so, to recoup lost revenues, DWP now
15 raises its fees—but only for "commercial." This DWP fee scheme is inherently
16 unlawful under Prop. 218 because DWP overcharges one group, "commercial,"
17 forcing that group to unwittingly subsidize another group, "residential."
18

21 (15) Prop. 218 does not allow DWP to force taxpayers to reimburse lost revenues
22 because Prop. 218 exclusively limits fees to the "cost of service." But even if
23 taxpayers must ultimately reimburse DWP's lost revenues, then *all* taxpayers
24 should bear this burden equally because *all* taxpayers share the same interest in
25 defraying the unforeseen "costs" of successful water conservation. If taxpayers
26 must pay, then *all* taxpayers should foot the bill equally—not just "commercial."
27
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1 (16) On the issue of why DWP increases delivery fees for “commercial” only,
2 DWP asserts that the “cost of service” to deliver water to “commercial” is
3 supposedly greater than “residential.” However, DWP refuses to explain how the
4 “cost of service” is supposedly greater. By refusing to explain its “cost of service”
5 calculations, DWP violates fundamental principles of Prop. 218.
6
7

8 (17) On the whole, “residential” parcels use far greater amounts of water than do
9 “commercial” parcels; in fact, “R” uses 22+ gallons for every one gallon “C” uses!
10

11 (18) DWP has actual knowledge that the bulk of its overhead costs are in fact
12 attributable to “residential” parcels owing to the simple reason that “residential”
13 uses *more than twenty-two times* the amount of water that “commercial” uses.
14

15 It’s simply unreasonable for DWP to suggest that “C” incurs more costs than “R.”
16

17 (19) It’s also unreasonable for DWP to bill individual customers based on the
18 consumption habits of the group, *i.e.*, “R” or “C.” DWP should not stereotype its
19 “R” and “C” customers because there is such a wide range of water users in both
20 categories. DWP delivery fees must be based on the actual “cost of service” to
21 deliver water to an *individual* customer—NOT on DWP’s blanket generalizations
22 as to how the *group* uses water.
23
24

25 (20) DWP violates Prop. 218 by calculating delivery fees based on zoning letters.
26 Delivery fees must be based on “cost of service,” not zoning. When all’s said,
27 City’s artificial zoning designations do not affect DWP’s cost to deliver water!
28

1 (21) Attempting to justify the “usage increase” fees for “commercial” only,
2 DWP Gen. Mgr. Jerry Gruber makes the totally bogus claim that “commercial”
3 supposedly has not paid its fair share over the years. Gruber says DWP has been
4 generous to allow “C” customers to underpay their water bills for so many years!
5 Gruber’s foolish assertions show just how disingenuous DWP has become.
6

7
8 (22) Worse still, Big Bear Lake City Councilperson Michael Karp explains that
9 the “cost of service” for “commercial” is different than “residential” because of
10 different “peak” hours! But Karp’s unqualified explanation is without foundation.
11 The Court will note that Karp runs a family counseling business at his home in
12 Big Bear Lake. Karp’s enterprise is obviously “commercial” and he too should
13 pay the “commercial usage increase,” just like Plaintiff.
14

15
16 (23) And most unfair of all, DWP deems “vacation rentals” to be “residential.”
17 Vacation rentals are single-family homes rented as overnight lodging facilities.
18 These 2,100 vacation rentals are on parcels zoned “residential,” however, the BBL
19 Municipal Code defines their *use* as “commercial.” These 2,100 overnight lodging
20 facilities should pay the “commercial usage increase,” just like Plaintiff.
21

22
23 (24) Most confounding of all, in determining which taxpayers get the “R” or “C”
24 labels, DWP defines “residential” customers as “*residential*,” and “commercial”
25 customers as “*nonresidential*.” These bootstrapped definitions directly contradict
26 BBL Municipal Code definitions for “residential” and “commercial.”
27
28

1 (25) DWP definitions for “R” and “C” are vague and ambiguous; when DWP
2 refers to “*residential*,” does it mean “residential zoning” or “residential use?”
3

4 Under DWP’s hollow definitions, churches are deemed “commercial” users!
5 The definitions for “R” and “C” categories are way too flimsy to be constitutional.
6

7 (26) Because DWP defines “commercial” as “*nonresidential*,” DWP places
8 churches, schools, parks, hospitals and government in the “commercial” category;
9 but this makes no sense. Delivery fees must be based on the “cost of service”—
10 NOT on DWP’s arbitrary application of the “R” and “C” labels.
11

12 (27) Before raising water delivery fees, Prop. 218 requires that DWP must first
13 provide the basis on which the proposed fee was calculated along with the reason
14 for the proposed fee. [See Calif. Const. Art. XIII D Sec. 6(a)(1)] But despite
15 Plaintiff’s requests, DWP refuses to provide any explanation for its delivery fees.
16
17

18 (28) DWP’s “R” and “C” categories and the “commercial usage increase” are
19 unconstitutional. DWP must pay damages, costs, and attorney’s fees for violation
20 of Prop. 218 and Calif. Const. Art. XIII D. DWP must charge the same fees to all
21 taxpayers—regardless of whether a given parcel happens to be zoned “R” or “C.”
22
23

24 (29) Prop. 13 was designed to protect property owners from rising taxes by
25 limiting how high and how fast property taxes can climb. But sadly, in the wake of
26 Prop. 13, bureaucrats began looking for sneaky ways to get revenue from property
27 owners by circumventing Prop. 13 with novel fees, charges, and assessments.
28

1 (30) In the spirit of the taxpayer rebellion that began with Prop. 13, California
2 voters closed the door to sneaky bureaucrats by adopting Prop. 218, which now
3 protects property owners by limiting the agency's ability to impose fees, charges,
4 and assessments, including "property related fees" such as water delivery service.
5

6
7 (31) California courts liberally construe Prop. 218 with a view to effectuating its
8 purpose, *i.e.*, "limiting local government revenue." [See Calif. Const. Art. XIII D]
9

10 The California Constitution requires this Court to err on the side of protecting
11 property owners by limiting the agency's fees for "property related services."
12

13 (32) While DWP wishes to recoup revenue lost to successful water conservation,
14 Prop. 218 protects property owners from being forced to make up this lost revenue.
15 Property owners are NOT required to bailout DWP; besides, DWP has only itself
16 to blame for shortsightedness and the resulting lost revenue.
17

18 (33) Instead of raising its water delivery fees, DWP must first trim the budget!
19 DWP spending is wasteful. DWP must control its wasteful spending before raising
20 "property related fees" that essentially operate as a tax! Here, by circumventing
21 the California Constitution, DWP essentially raised Plaintiff's property taxes!
22 Under Prop. 218, no agency can raise Plaintiff's taxes without his express consent!
23 Big Bear Lake Ordinance #2007-374 violates Calif. Const. Art. XIII D and must
24 therefore be ruled invalid.
25
26
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1 (39) DWP cannot rationally justify water delivery fees based on whether City's
2 artificial zoning letters happen to be "R" or "C." And, to make matters worse,
3
4 DWP arbitrarily assigns the "R" and "C" labels. If this Court allows DWP to
5
6 continue setting delivery fees based on artificial zoning designations, then City
7
8 Council will have built-in motives to skew the zoning map in Big Bear Lake.

8 (40) All property owners are entitled to equal treatment from DWP, including the
9
10 fundamental right to pay the same fees for the same "property related services."
11
12 Because DWP delivers the same "property related services" to one and all,
13
14 Prop. 218 requires that DWP must charge the same fees to one and all.

14 (41) DWP's "R" and "C" categories and the "commercial usage increase" are
15
16 unconstitutional. DWP must pay damages, costs, and attorney's fees for violation
17
18 of the Equal Protection Clause. DWP must charge the same fees to all taxpayers—
19
20 regardless of whether taxpayer's parcel happens to be zoned "R" or "C."

20 (42) The proposed injunction might read: "DWP must charge the same water
21
22 delivery fees—regardless of zoning—to all users in the City of Big Bear Lake."

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DEMAND FOR RELIEF

WHEREFORE, Plaintiff seeks Judgment against Defendants as follows:

- (i) For monetary damages in accordance with proof;
- (ii) For costs and expenses of suit;
- (iii) For reasonable attorney's fees, per CCP §1021.5, for enforcing important rights affecting the public interest, and for conferring substantial benefits upon the general taxpayer public;
- (iv) For an injunction requiring DWP to charge the same basic water rates to all water users in the City of Big Bear Lake, e.g., "DWP must charge the same water delivery fees—regardless of zoning—to all users in the City of Big Bear Lake;"
- (v) For other relief that the Court deems just and proper.

Dated: Nov. 17, 2007

Law Offices of T. Matthew Phillips



T. Matthew Phillips, Esq.
Plaintiff's Counsel.

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