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**FILED**

**AUG 23 2007**

**KIM TURNER**  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Minkiewicz, Deputy

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6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
8 **COUNTY OF MARIN**

9 AYLSWORTH CRAWFORD GREENE aka  
10 FORD GREENE, an individual elector,

11 vs.

12 MARIN COUNTY FLOOD CONTROL AND  
13 WATER CONSERVATION DISTRICT, a body  
corporate and politic,

14 Defendant.

Case No. CV 073767

**ELECTOR'S OPPOSITION TO EX PARTE  
APPLICATION FOR ORDER  
AUTHORIZING FILING OF COMPLAINT  
IN INTERVENTION BY THE FLOOD  
MITIGATION LEAGUE OF ROSS VALLEY  
AND THE FRIENDS OF THE CORTE  
MADERA CREEK WATERSHED**

**Date: 8/23/07**

**Time: 8:45 a.m.**

**Place: Courtroom L [Hon. Lynn Duryee]**

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18 **INTRODUCTION**

19 The ex parte application (the "application") before the Court this morning is for permission to  
20 file a complaint in intervention so as to make the proposed intervenors <sup>1/</sup> parties to the Election Contest  
21 set for this Court's determination on September 7, 2007.

22 The application should be denied three grounds: procedural, evidentiary and substantive.  
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26 <sup>1</sup> The proposed intervenors are The Flood Mitigation League Of Ross Valley and The Friends Of  
The Corte Madera Creek Watershed.  
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1 The application fails to comply with the requirements imposed by California Rules of Court,  
2 Rules 3.1201 (2)(4) and (5).<sup>2/</sup>

3 The required declaration in support of the application fails to comply with Rules 3.1201 (2) and  
4 3.1202 (c) because it fails to contain “competent testimony based on personal knowledge of irreparable  
5 harm, immediate danger, or any other statutory basis for granting ex parte relief.” The four pages of Mr.  
6 McInerney’s declaration is densely loaded with technical facts that fail to show any foundation as to any  
7 of them and is devoid of facts showing that any such information is based on his personal knowledge.<sup>3/</sup>

8 The memorandum of points and authorities required by Rule 3.1201 (4) is entirely absent from  
9 the presentation, as is a proposed order. (Rule 3.1201 (5))<sup>4/</sup>

10 Substantively, it would be improper for the Court to allow intervention because the Complaint in  
11 Intervention asserts what is in fact a consequential rather direct interest in the instant litigation, would  
12 impermissibly expand the scope of the election contest to include a general review of the propriety of the  
13 Marin County Flood Control and Water Conservation District’s (the “County”) use of Proposition 218 in  
14 conducting the storm drainage fee election, and interferes with the manner that the elector has chosen to  
15 proceed with the litigation. It would result in generating complicated litigation to be resolved within a  
16 short period of time inadequate for the deliberative analysis such complicated litigation properly merits.

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22 <sup>2</sup> The Uniform Local Rules of the Marin County Superior Court, Rule 6/7 (b) incorporates the requirements of Rule 3.1201 et seq.

23 <sup>3</sup> Counsel objects to all material starting at page 1, line 10 through page 4, line 5 on the following  
24 grounds: hearsay, improper lay opinion, lacks in authentication, lacks in foundation, and constitutes  
25 unqualified expert testimony; thus counsel requests that the Court strike that all such material.

26 <sup>4</sup> It is, of course, entirely possible that the intervenors will cure this defect at the hearing. Elector  
27 counsel was not served with any order accompanying their papers.

1 It would thus detract from the narrow and focused scope of the election contest by interjecting  
2 unnecessary and unwanted complexity.

### 3 ARGUMENT

4  
5 As the procedural and evidentiary defects are evident on their face, there is no point in repeating  
6 those grounds. The substantive objection, however, bears further discussion.

#### 7 A. The Standard for Permissive Intervention

8 Code of Civil Procedure section 387, subdivision (a) provides, "Upon timely application, any  
9 person, who has in interest in the matter in litigation, or in the success of either of the parties, or an  
10 interest against both, may intervene in the action or proceedings...."

11  
12 When the proper procedures are followed, the trial court has the discretion to permit a nonparty  
13 to intervene in litigation pending between others, provided that (1) the nonparty has a direct and  
14 immediate interest in the action; (2) the intervention will not enlarge the issues in the litigation;  
15 and (3) the reasons for intervention outweigh any opposition by the parties presently in the  
16 action. (*Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 346, 70 Cal.Rptr.2d  
17 255.) An order denying intervention is reviewed under the deferential abuse-of-discretion  
18 standard. (See *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386, 100  
19 Cal.Rptr.2d 807.)

20 (*Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842)

21 "The permissive intervention statute balances the interests of others who will be affected by the  
22 judgment against the interests of the original parties in pursuing their litigation unburdened by others."  
23 (*City and County of San Francisco v. State* (2005) 128 Cal.App.4th 1030, 1036) The decision whether to  
24 allow intervention is best determined based on the particular facts in each case. (*Ibid.*)

#### 25 1. The Proposed Intervenors Have No Direct Interest Under Section 387 (a)

26 Despite its conclusory allegations that it has a "direct interest" sufficient to satisfy the first prong  
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1 of an analysis pursuant Code of Civil Procedure section 387 (a), <sup>5/</sup> under the relevant case law such  
2 claims are insufficient for the purposes of permissive intervention.

3 In *City and County of San Francisco v. State, supra.*, the First District addressed an effort to  
4 intervene brought by a political organization. The court of appeal defined the issue as follows:

5 In a case challenging the legality of an initiative enacted by California voters, does an  
6 organization created to defend the initiative have a sufficiently direct and immediate interest in  
7 the litigation to require that it be permitted to intervene under Code of Civil Procedure section  
8 387, subdivision (a)? Here, one such organization, the Proposition 22 Legal Defense and  
9 Education Fund (Fund), argues the trial court erred in denying its motions to intervene in two  
10 cases, since consolidated, that challenge the applicability and constitutionality of Family Code  
11 sections defining marriage in California as between a man and a woman. (Fam.Code, § § 300,  
12 301, 308.5.) [footnote omitted] We conclude the trial court did not abuse its discretion in denying  
13 the Fund's motions for permissive intervention because the Fund has identified no direct or  
14 immediate effect that a judgment in the consolidated cases may have on it or its individual  
15 members. Although the Fund actively supports the Family Code statutes in question, its interest  
16 in upholding these laws is not sufficient to support intervention where there is no allegation the  
17 Fund or its members may suffer tangible harm from an adverse judgment.

18 (*City and County of San Francisco v. Stat, supra*, 128 Cal.App.4<sup>th</sup> at 1033)

19 “To support permissive intervention, it is well settled that the proposed intervenor's interest in the  
20 litigation must be direct rather than consequential, and it must be an interest that is capable of  
21 determination in the action. [citations] “*Id.*, 128 Cal.App.4<sup>th</sup> at 1037) “The requirement of a direct and  
22 immediate interest means that the interest must be of such a direct and immediate nature that the moving  
23 party “ ‘will either gain or lose by the direct legal operation and effect of the judgment.’” (*Ibid.*)

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24 <sup>5</sup> The ex parte application states: “As organizations based in the Ross Valley with members who  
25 are directly impacted by this chronic flooding and collection of the storm drainage fee, the Intervenor  
26 have a direct interest in this litigation” (Ex parte application at p. 1, lines 13-15); “. . . everyone in the  
27 Ross Valley was impacted by the flood waters that surged through these communities” (ex parte  
28 application at p. 2, lines 16-17); and “As shown by the facts alleged herein, Intervenor have a direct  
interest in the subject matter of this litigation, as set forth in section 387 (a) of the Code of Civil  
procedures. Each Intervenor has within its membership resident of the Ross Valley who will be directly  
impacted by the flood control projects that will be funded by the storm drainage fee.” (ex parte  
application at p. 3, lines 23-26)

1           “A person has a direct interest justifying intervention in litigation where the judgment in the  
2 action *of itself* adds to or detracts from his legal rights without reference to rights and duties not involved  
3 in the litigation. [Citation.]” [citation omitted; italics added by court of appeal] (*Ibid.*) Conversely, “An  
4 interest is consequential and thus insufficient for intervention when the action in which intervention is  
5 sought does not directly affect it although the results of the action may indirectly benefit or harm its  
6 owner.” (*Ibid.*)  
7

8           The focus of the case at bar is whether voters were disenfranchised by a failure to adequately  
9 warn that the failure to sign the ballot would invalidate the vote otherwise properly cast; it is not on the  
10 propriety of the storm drainage fee. The instant litigation is focused solely on the adequacy of notice  
11 regarding potential vote invalidation. It has nothing to do with the propriety of the County’s use of  
12 Proposition 218 or the efficacy of the efforts that the fees collected will produce.  
13

14           The interests of the intervenors are thus consequential.  
15

16           2.       Intervention Would Impermissibly Enlarge The Issue In The Litigation

17           The thrust of the Election Contest is strictly limited to the question whether the form of the ballot  
18 provided reasonable and adequate notice to the 1,648 voters - whose votes were invalidated because they  
19 did not sign their name next to their votes - that failure to sign the ballot would have such the drastic  
20 consequence of their votes not being counted.  
21

22           The election contest studiously avoids any claim whether under Proposition 218 the designers of  
23 the ballot were authorized to require a signature.<sup>6/</sup> The complaint in intervention seeks a judicial  
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26           <sup>6</sup> Paragraphs 16-18 of the Complaint in Intervention argues that the signature requirement on the  
27 storm drainage fee was legally authorized. The election contest does not make any challenge directed at  
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1 declaration of the broad question that “The vote was conducted lawfully and in conformity with  
2 California election law as well as the requirements of Proposition 218.” (Complaint in Intervention at  
3 page 7, lines 23-24, ¶¶ 28.b.) Thus, the relief the intervention complaint seeks it seeks goes far beyond  
4 the issue raised in the election contest.  
5

6 Proposition 218 is an amendment to the California Constitution located at Article 13, section D  
7 that was mandated by an initiative measure approved November 5, 1996. It has generated substantial  
8 litigation.<sup>7/</sup>

9 The narrow and limited focus of the election contest was specifically constructed to avoid what  
10 appears to be the likely complex judicial determinations which the task of interpreting Proposition 218  
11 would occasion.  
12

13  
14 the signature requirement. It’s sole focus is whether adequate notice was given of the consequence of  
15 failing to sign.

16 <sup>7</sup> Its application has been the subject of numerous published (and unpublished) appellate court  
17 decisions including, but not limited to, *Pajaro Valley Water Mgmt. Agency v. Amrhein* (2007) 150  
18 Cal.App.4th 1364; *AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747; *Macy's*  
19 *Dept. Stores, Inc. v. City and County of San Francisco* (2006) 143 Cal.App.4th 1444; *Bighorn-Desert*  
20 *View Water Agency v. Verjil* (2006) 39 Cal.4th 205; *Andal v. City of Stockton* (2006) 137 Cal.App.4th  
21 86; *Unfair Fire Tax Committee v. City of Oakland* (2006) 136 Cal.App.4th 1424; *Neilson v. City of*  
22 *California City* (2005) 133 Cal.App.4th 1296; *Regenis of University of California v. East Bay Mun.*  
23 *Utility Dist.* (2005) 130 Cal.App.4th 1361; *Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127  
24 Cal.App.4th 914; *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374;  
25 *Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809; *City of Saratoga v. Hinz*  
26 *(2004) 115 Cal.App.4th 1202; Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106  
27 Cal.App.4th 1178; *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351;  
28 *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637; *Not About Water*  
*Committee v. Board of Sup'rs* (2002) 95 Cal.App.4th 982; *Traders Sports, Inc. v. City of San Leandro*  
(2001) 93 Cal.App.4th 37; *Home Builders Ass'n of Northern California v. City of Napa* (2001) 90  
Cal.App.4th 188; *White v. State* (2001) 88 Cal.App.4th 298; *Wallich's Ranch Co. v. Kern County Citrus*  
*Pest Control Dist.* (2001) 87 Cal.App.4th 878; *Ventura Group Ventures, Inc. v. Ventura Port Dist.*  
(2001) 24 Cal.4th 1089 and so on.

1 An election contest is a special, limited and expeditious proceeding. To open it up to include  
2 determinations regarding the propriety of the County's use of Proposition 218 in the storm drainage fee  
3 election would derail the streamlined nature of the action, expand the scope of the litigation and interfere  
4 with the manner in which the elector has chosen to proceed. To allow intervention would also interject  
5 multiple, complex and complicated issues into what otherwise is a single issue lawsuit. The  
6 determination of such multiple issues are better suited for the normal process of ordinary litigation.  
7 Thus, instead of the self-imposed limit designed to focus on the simple and straightforward question  
8 regarding the adequacy of the notice to the voters that their failure to sign would have the consequence  
9 that his vote would not be counted, the election contest would be transformed into a general referendum  
10 on Proposition 218.  
11

12  
13 3. The Reasons For Intervention Do Not Outweigh The Opposition by This Elector

14 For the specific purpose of challenging the integrity of the ballot employed in the election by  
15 focusing on the adequacy of notice that the failure to sign would result in the invalidation of the vote,  
16 this elector made a conscious decision to avoid the complexities inherent in Proposition 218  
17 interpretations. The integrity of the ballot has nothing directly to do with the propriety of the County's  
18 use of Proposition 218 or the potential efficacy of the manner in which storm drainage fees may be  
19 employed.  
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22 To allow intervention would by complication corrupt the streamlined focus this elector has  
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1 chosen to employ in the context of the instant election contest.<sup>8/</sup>

2 B. Potential Res Judicata or Collateral Estoppel Effect

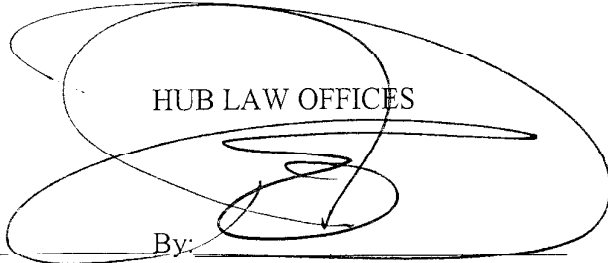
3 The relief that the intervenors seek includes a judicial declaration that the “vote was conducted  
4 lawfully and in conformity with California election law as well as the requirements of Proposition 218.”  
5 Any judicial declaration in this regard would most likely be asserted as a bar to any future litigation as to  
6 the propriety of the County’s use of 218 on the basis of collateral estoppel and res judicata principles.  
7

8 On August 20, 2007, attorney Wayne Lewis Lesser notified the County of his intention to sue and  
9 litigate issues regarding the storm drainage fee and Proposition 218 (Exhibit A). The instant ex parte  
10 application followed.  
11

12 **CONCLUSION**

13 Based on the foregoing points and authorities, elector and attorney Ford Greene respectfully  
14 submits that the ex parte application for permission to intervene should be denied.  
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17 DATE: August 23, 2007

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HUB LAW OFFICES  
By: \_\_\_\_\_  
Ford Greene  
Attorney and Elector

25 <sup>8</sup> While the proposed intervenors may not be parties in the instant litigation, they do have the  
26 option of seeking permission to present its view through amicus curiae briefs. (*Jersey Maid Milk*  
27 *Products v. Brock* (1939) 13 Cal.2d 661, 665; *City and County of San Francisco v. State, supra.*, 128  
28 Cal.App.4<sup>th</sup> at 1044)

DECLARATION OF FORD GREENE

Ford Greene declares:

1. I am an attorney licensed to practice law in the State of California and am the elector and plaintiff herein.
2. In drafting the election contest I made a conscious decision to avoid litigating any issues raised or implicated by Proposition 218. The reason for this decision was my judgment that to do so would have the effect of generating myriad and complex issues the resolution of which would require detailed, time-consuming and distracting analysis. My point in choosing the remedy of the election contest was to commence narrowly focused and streamlined litigation that would expeditiously resolve the issue whether the ballot the County employed in the storm drainage fee election gave the voters adequate notice that the failure to sign the ballot would result in the vote cast not being counted.
3. To allow the proposed intervention into the election contest would derail and interfere the manner in which I have chosen to proceed.
4. On August 22, 2007, I received from Wayne Lewis Lesser a letter dated August 20, 2007 that he wrote to the County. A true and correct copy thereof is attached hereto as Exhibit A.

Under the laws of the State of California and under penalty of perjury I hereby declare the foregoing is true and correct. This declaration is executed on August 23, 2007 at San Anselmo, California.

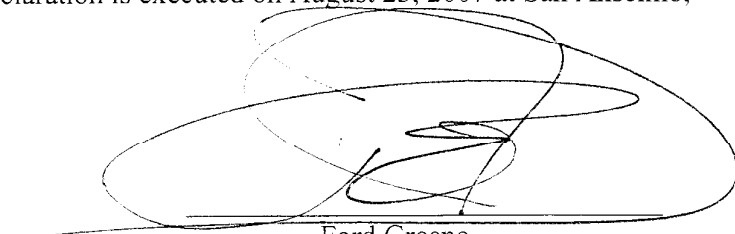
  
Ford Greene

EXHIBIT A

**WAYNE LEWIS LESSER**

August 20, 2007

Steve Kinsey, President  
Marin County Board of Supervisors  
Marin County Flood Control & Water Conservation District  
3501 Civic Center Drive, Room 329  
San Rafael, California 94903

Farhad Mansourian, Director  
County of Marin Public Works  
3501 Civic Center Drive Rom 304  
San Rafael, California 94903

Clerk, Marin County Board of Supervisors  
3501 Civic Center Drive, Room 329  
San Rafael, California 94903

**Re: Pre litigation Notice re Storm Drainage Fee and Vote to help Fund the Ross Valley Flood Protection and Watershed Program**

Dear Mr. Kinsey,

**A. Pre-suit/Litigation Notice**

1. This Pre Suit/Litigation Notice, statement of grievances, and proposed remedies is provided under the requirements of *Graham v. Daimler Chrysler* (2004) 34 Cal. 4<sup>th</sup> 553, 557 and other pertinent cases and statutes, in an effort to avoid protracted litigation over the process of securing the vote, the vote, and the aftermath of the vote (hereinafter referred to as the flood control vote or vote); and to avoid voter and refund claim procedures and actions in Article 2, Chapter 5, Part 9, of Division 1 of the Revenue and Taxation Code and H&S Code § 5472, and/or otherwise.

Additionally, to the extent recognized/required by law, please consider this letter as an "appeal" to the Board of Supervisors of Marin County as may or may not be required under any exhaustion of administrative remedy statute or applicable case law.

**B. Background**

2. I live in the Marin County Flood Control and Water Conservation District. I am subject to the forthcoming Flood Control District Zone 9 Annual Storm Drainage Fee. I acknowledge that we, our Ross Valley communities, businesses and neighbors all suffered financially and

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**WAYNE LEWIS LESSER**

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emotionally, directly or indirectly, by our creeks overflowing resulting in flooding in January 2006. Many of our neighbors suffered serious financial damage to their homes, businesses, and livelihoods. I know that many, many volunteers volunteered time and money to work with our neighbors, elected officials, and dedicated public servants in an attempt to develop solutions that could contain a flood similar to last year.

3. I had also been informed in County/ DPW publication(s) that a local source of revenue, such as the storm drainage fee, *could* allow Ross Valley to successfully compete for millions of dollars that would otherwise go to other communities. For the purposes of this letter I accept those representations as true. Notwithstanding, the process by which the Flood Control vote was passed, was irrevocably tainted by the failure to follow the law. As such, the actual imposition of the tax must not take place and the vote needs to be redone in strict compliance with the law.

4. I take no position on the merits of the proposed vote. I take no position as to the correctness of whether the promises made about whether the money raised and spent will achieve its anticipated purposes or objectives. I don't know if it will or not. I take no position at this time of whether the fee is a "tax" or a "fee" subject to Prop 13 or Prop. 21. I have no secret agenda or otherwise, no aspirations to run for public office, and if I did, it is irrelevant in the context of the situation which we as neighbors and friends, on one side of an issue or another, are facing.

5. My "agenda" and concern is the protection of the voting and ballot process that exists in our democracy and the fairness of our democratic principles. Because, where the voting process is compromised, democracy suffers, and bad precedents are created for us all. If bad precedents and processes are allowed to stand, especially those pertaining to due process and other issues protected by the Constitution, next time many might be on the other side of an issue and taste the bitterness of impropriety in the process. The bottom line is that if the process is unlawful, democracy suffers. None of us, on any side of an issue, wants that to happen. Because if it does, as we all lose.

**C. Grievances:**

6. **1. The ballot that was sent to voters ordering one vote per parcel was not prepared or sent in accordance with the Resolutions and instructions passed by the MCFCWCD and the Board of Supervisors from March to June, 2007.**

7. The fundamental and fatal flaw in the voting process may be found in a two page letter (and embedded in exhibits/attachments) dated May 1, 2007 sent by Farhad Mansourian, RCE Director, to the Board of Supervisors: **Subject: Resolution of the Board of Supervisors of the Marin County Flood and Water Conservation District authorizing the use of Mail Ballot Election according to the required procedures as set forth by the State Constitution.**

8. At Summary (¶ 2) it states "According to Section 6 of Article XIID... the District is required to follow certain procedural and substantive requirements relating to the imposition of

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property-related fees and charges.... In conformance with this law, the District mailed notices to the **owners** at the addresses listed with the Assessor's Office using the last equalized tax roll...." If done, and notices were sent to **owners** (plural) that is a correct statement of and compliance with the law. But, it is doubtful that notices were sent to **owners** (plural). The letter at page 2 refers to Attachments: 1. Resolution ; and 2. **Exhibit A-Procedures for Mailed Ballot Election Relating to proposed annual Storm Drainage Fees.**

9. The proposed Resolution, 3 pages, states at the first page at ¶ 4:

*Whereas, before imposing the Annual Storm Drainage Fees, this Board must hold a noticed public hearing on the Report... and (b) assuming that a majority protest is not received at the public hearing, submit the question of the imposition of the Annual Storm Drainage fee to a vote of the **owners<sup>1</sup> of the property<sup>2</sup> subject to the proposed annual Storm Drainage fees;....**"*

10. Thereafter the Board passed a Resolution (May 1,07) that the foregoing recitals were true and correct Section 1. (a) and at Section 4. Authorized and Call for Special Election to be held on June 25 by mailed ballot in accordance with Section 6 and the procedures set forth in Exhibit A, attached hereto and by reference incorporated herein, for **the purpose of submitting the Annual Storm Drainage Fees to a vote of the owners of parcels that are subject thereto. (Please note that the reference to the word "owners", not owner).**

11. Despite the clear mandate of the board and the law, this was not done (there was no submission of the Annual Storm Drainage Fee to a vote of the owners of the parcels that are subject thereto). **Exhibit A** is a seven page document with attachments. At page 2 section B, it sets forth the provision on **Mailing of Ballots**. At B.2. The Clerk is directed to prepare a master list of Record Owners which includes the names and address of the record **owners** (plural); and at B.3. mandated for **each** record owner, a **notice of the election and a ballot and a self addressed stamped envelope** provided.

12. On **Exhibit A**, page 3, paragraph C Eligibility to Vote, ¶ 3 it states:

In order to be counted, a ballot must be signed by the record Owner or current owner of an Identified parcel, as the case may be, or the authorized representative....***In the event an Identified Parcel is owned by multiple owners or is owned by a corporation,***

---

<sup>1</sup>plural

<sup>2</sup> each property

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WAYNE LEWIS LESSER

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*partnership, as community property, in joint tenancy, or as a tenancy in common, only one ballot will be counted for each identified parcel<sup>3</sup>*

13. This instruction, one parcel-one vote, is carried forward in the voting process and election, and is in direct conflict with the Resolution authorizing the vote. Nowhere in the Resolution or enabling language was there any mention of limiting the vote to only one owner of a subject property.

**2. The ballot sent, election held, and vote which disenfranchised hundreds of eligible voters was done in violation of California Constitution (Proposition 218) XIID.**

14. California Constitution (Proposition 218) XIID is known as and may be cited as the "right to Vote on Taxes Act." In the legislative findings and declaration (Section 2) it is stated:

"The people of the State of California find and declare that *Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases.* However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. *This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.*"

15. On May 1, 2007 the Marin Board of Supervisors was informed in writing that the Howard Jarvis Taxpayers Association found that there was a fatal flaw in the proposed fee ballot that according to the Marin DPW, parcels designated by the Assessor as "Use Code 80" were exempt from the flood control fee. The Board of Supervisors was put on notice at that time. The letter went on to say that according to the California Supreme Court in *San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3rd 154, when one tax-supported entity provides goods and services to another, the Constitution and case law exempts public entity from paying for these goods and services. *Id.* at 161. If this is true and Marin DPW did omit these Use Code 80 parcels from fees, it is grounds to have the election invalidated. If this is true then the actions of the Board of Supervisors are permitting certain property owners to shift their tax burden to other property owners in violation of law.

16. **Prop. 218, Sec. 4 (a)** includes parcels that are owned or used by any agency, the State or the United States. I do not know if these parcels were exempted by our local election. If they were they should not have been.

---

<sup>3</sup>This provision conflicts with the language of the resolutions, Prop. 13, Prop 218, and the Health and safety code 5471 et. seq. and is a denial of multiple Constitutional principles

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## WAYNE LEWIS LESSER

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17. **Prop. 216, Sec.4 (d)** requires that "each notice (be) mailed to *owners* of identified parcels...; and 4 (e) requires that the agency: "shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposes assessment *to record owners* of each identified parcel. (Note, this is part of the pre- vote process)
18. **Prop. 218, Sec. 6:** "Property Related Fees and Charges" identifies with specificity the steps and procedures that must be taken to imposing ...any fee or charge.
19. **Prop. 218, Sec 6 (a) (1)** requires the identification of parcels upon which fees and charges is proposed and calculating the amount, and provides notice/ procedure of the proposed fee or charge to the *record owner* (singular) of each identified parcel and notification of a public hearing to be held.
20. But, in **Prop. 218 Sec. 6 (a) (2)**: it is required to have mailed notice of hearing on the proposed fee or charge to the record *owners* (plural)..., and if written protests against fees and charges were presented by a majority of the *owners* (plural) *of the identified parcels*, no fee or charge should be made.<sup>4</sup>
21. County records reflect that no majority in/of owners' opposition was received and election was scheduled and held on June 25, 2007.
22. Before the election **Prop. 218** requires that:

**Sec. 6 ( c )** Voter Approval for New or Increased Fees and Charges states: ...  
**No property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the *property owners of the property subject to the fee or charge or, ...by a two-thirds vote of the electorate residing in the affected area...***

23. **Prop. 218** states: SECTION 5. LIBERAL CONSTRUCTION. The provisions of this act *shall be liberally construed to effectuating its purposes of limiting local government revenue and enhancing taxpayer consent*

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fn 4

The County was required to "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." (Cal. Const., art. XIII D, § 4, subd. (c). *Dahms v. Downtown Pomona Property and Business Improvement District* (2006) 138 Cal. App. 4<sup>th</sup> 115, 120.

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24. Notwithstanding the above, hundreds and maybe thousands of voters who were eligible to receive a ballot did not receive any ballot and were not permitted to exercise their constitutional right to vote. In addition, the local ballot language "Only one owner or authorized representative may vote representing each parcel" was false, misleading and contrary to the plain language of the law. The election must fall and by Board action, be declared invalid.

25. For the reasons stated above, the vote was unlawful, taken unlawfully, done to maximize government revenue, and to *reduce* taxpayer consent, all in violation of **Prop. 218**

26. Subsequent to **Prop. 218** (Article XIIC and D), the "**Proposition 218 Omnibus Implementation Act**" was passed. See, Cal. Gov. Code § 53750. It defined notice by mail as notice required by Article XIIC or XIID. It defines "record owner as the owner of a parcel whose name and address appears on the last equalized secured property tax rolls, (j). It does not preclude from vote or notice more than one owner whose names appear on the rolls. **Govt. Code § 53753 et. seq.** requires that prior to levying a new or increased assessment...*that is subject to the procedures and approval process set forth in Sec. 4 of Article XIID of the California Constitution notice by mail to the record owner of each identified parcels. Gov. C. § 53753(b).* As noted at fn. 4, that provision was construed by the court to extend to record owners. Significantly, the Omnibus Implementation Act at (e)(1) contemplated that more than one owner would appear on the assessment rolls for each property. It stated: *In the event that more than one of the record owners of the identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot in proportion to the respective record ownership interests (plural).* Since only one ballot (in our vote) was allowed per parcel, this provision was violated and the vote was not done in accordance with the Omnibus Implementation Act and Proposition 218.

### 3. The election and violated Health and Safety Code § 5471 et. seq.

27. Local MCBS **Ordinance 3472** was passed with less than a 2/3 vote of its members. That did not comply with H&S Code§ 5471 and § 5473. **Ordinance 3472**, in part adopting resolution No. 2007-74 pertaining to the election scheduled for June 25, 2007, and its aftermath authorizing the levy of certain fees was passed by three of five supervisors in violation of **H & S § 5471, 5473**, requiring that the ordinance proposed and passed have a affirmative vote of the 2/3 members of the legislative body thereof for valid approval. Three of Five is not 2/3.

28. It is unclear whether those in charge of the elections, i.e. the Department of Public Works or Marin County Supervisors, complied with the Health and Safety Code provisions requiring certain mailings to be made before the hearing, and again, before the election, *to each person to whom any parcel or parcels of real property described in said report is assessed in the last equalized assessment roll available... ."* **H & S § 5473.2** extends to the *owners (plural) of a*

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*majority of separate parcels.* It is clear that the H&S Code underscores and is consistent with **Prop. 218** and the right of each and every property owner to the protection of the law and notice.

29. **Prop. 218** and local laws also extend the right to vote on fees such as the subject ballot to certain classes of tenants/ lessees. It is unclear whether the limitations and protections under the law were extended to that class of voter. I assume not as there is no language which addressed this issue and the ballot itself omitted any reference to the rights of eligible tenants

30. There can be no dispute that *all owners of all separate parcels* were entitled to pre ballot notice and a fair, accurate, and lawful ballot to vote on a fee/tax to which they were obliged to pay.

31. This **only one vote** directive did not just permit notice to the parcel but to each person owning the parcel as per the assessment roll. I am inclined to think that this was not done. If not, H&S C. § 5473.1 has been violated and lawfully insufficient notice has resulted.

**4. Hundreds of identified eligible parcels were omitted from the required mailers and the required ballots and were denied the right to vote**

32. I have been informed that ballots were mailed to approximately 15,010 parcels, many of which had multiple owners. Each owner did not receive a ballot as required by law. That invalidates the election. But I am also informed that up to 700 parcels which were otherwise listed on the tax assessment rolls for one owner, eligible, and the owner's responsible for the payment of a proposed flood fee, received no ballot at all. Each could not and did not vote.

33. I admit that the information above is anecdotal and I myself have not had time to study the list that I saw.

**5. The ballot itself is the subject of much dismay and confusion**

34. Through public media articles I understand that the (owner(s)?) of some 15,010 parcels we allegedly mailed and presumably were the recipients of a flood control ballot. On July 2, 2007 the Marin IJ stated that 3,208 votes were cast in favor of a yes vote and 3,142 were no votes. The IJ went on to state that 1708 ballots were judged invalid and of those, more than 1000 were rejected because they were not signed by the property owner - according to the Registrar of Voters office. The measure passed by 65 votes. Assuming for the sake of this grievance /notice letter that 708 ballots were rendered invalid exclusive of not being signed, it raises the question as to why 708 ballots were rendered invalid, exclusive of voters not signing their names. That raises a serious problem and other due process questions.

35. I concur with Mr. Ford Greene, Esq., that there are significant problems with the form of the ballot. Mr. Greene has raised these issues in a lawsuit he filed on August 9, 2007.

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36. I raise this issue because I have been provided with copies of several ballots. I received a copy of a ballot sent to me on August 17, 2007 by MCFCWCD. It states in part at the bottom in small type "If you wrongly mark or deface this ballot, it will be **invalidated.**"...

37. Several weeks ago, I saw a voter ballot on line and printed it. It states in part at the bottom in small type, "If you wrongfully mark or deface this ballot, it will be *invalidated.*"<sup>5</sup> The word "**invalidated**" has no meaning and the attempt at a warning or punishment for not completing the ballot as ordered, was ineffective.

38. I am enclosing both copies of the ballot for your consideration and if the one containing the word "**invalidated**" was sent out to the public, the county had no right to either "invalidate" or invalidate those other 708 votes that were invalidated after the flood fee election .

39. Since there appears to be two versions of the ballot that I have seen, I do not know which one is the real one that was sent out to the voters or whether both versions were sent out.

**6. Remedies:**

**A. Preferred remedy**

40. I request that the Board of Supervisors declare the election to have been infected with too many substantive and procedural problems and violations and declared void. I request that the Board re evaluate its procedures, follow the law, the spirit and intent of Prop. 218, Health and Safety Code, Government Code, and common sense and place the proper conditions, restrictions and guidelines in a new election where all eligible voters are given the right/opportunity to vote.<sup>6</sup>

41. I believe that our Marin County neighbors, supporters, and detractors would agree that fundamental fairness and due process dictate there be a "do over" of an invalid procedure and vote process. I believe that for the reasons I have set forth in this letter/notice that democracy will be served if the intent of Prop. 218 was acknowledged, strict compliance with notification procedures,

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<sup>5</sup> It is possible that the word "invalidate" became corrupted inside the internet when it was copied by me some weeks ago or the document it came from (redacted to protect the privacy of the voter) altered somehow by persons unknown. But, it is equally possible that the ballot language in question was actually sent out to the electorate raising another serious ground for invalidating the election.

<sup>6</sup> Our Supreme Court instructs that the constitutional amendments given life by Proposition 218 must be interpreted with an eye toward honoring the intent of the voters. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 212.

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all eligible voters be permitted to exercise their right, and that the mistakes made in a vote on the merits be corrected so that there is really an informed electorate and willing knowledgeable vote.

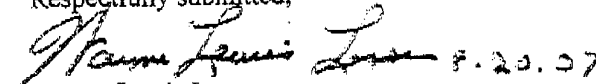
**B. Plan B-Refund Action(s), Declaratory Relief and Mandamus, Reverse Validation action<sup>7</sup>**

42. Your legal advisors will or have already advised you that H& S Code § 5472 states:

*After fees, rates, tolls, rentals or other charges are fixed pursuant to this article, any person may pay such fees, rates, tolls, rentals or other charges under protest and bring an action against the city or city and county in the superior court to recover any money which the legislative body refuses to refund. Payments made and actions brought under this section, shall be made and brought in the manner provided for payment of taxes under protest and actions for refund thereof in Article 2, Chapter 5, Part 9, of Division 1 of the Revenue and Taxation Code, insofar as those provisions are applicable.*

43. I invite you to consider the reactions of your constituents when you tell them they can file a claim for a refund and there is little more than that they can do. To take Plan B exalts the political process over the democratic process and cheapens our elective representatives. People are really not going to like this at all. A new election, however inconvenient, will work wonders to reaffirm the public trust in our system.

Respectfully submitted,

  
Wayne Lewis Lesser 8.20.07

cc: Interested Parties

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fn. 7. It appears that the state of the law on this procedure, if applicable, is in flux with the multiple cases involving the subject that are currently pending before the California Supreme including *Bonander v. Town of Tiburon* (2007) 147 Cal. App. 4<sup>th</sup> 1116.

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