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17 WILLIAM E. DAVIS and  
18 CITIZENS FOR CONSTITUTIONAL  
19 GOVERNMENT

**FILED**  
MARIPOSA SUPERIOR COURT

AUG 18 2015

**LILY GRACE PHILLIPS**  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MARIPOSA**

17	WILLIAM E. DAVIS, an individual, and	)	<b>CASE NO. 10600</b>
18	CITIZENS FOR CONSTITUTIONAL	)	
19	GOVERNMENT, a California unincorporated	)	<b>PETITIONERS' AND PLAINTIFFS'</b>
20	association,	)	<b>MEMORANDUM OF POINTS AND</b>
21	Petitioners and Plaintiffs,	)	<b>AUTHORITIES IN SUPPORT OF WRIT</b>
22	v.	)	<b>OF MANDATE AND COMPLAINT FOR</b>
23	BOARD OF SUPERVISORS OF COUNTY	)	<b>DECLARATORY AND INJUNCTIVE</b>
24	OF MARIPOSA, and DOES ONE TO	)	<b>RELIEF</b>
25	FORTY, INCLUSIVE,	)	[Code of Civil Procedure Sections 526a, 527
26	Respondents and Defendants.	)	et seq., 1021.5, 1060, and 1085]
27		)	
28		)	

1                   **I.       INTRODUCTION**

2                   This case arises from a challenge brought by the former Mariposa County Auditor and a  
3 local taxpayers’ organization against the Board of Supervisors of the County of Mariposa  
4 (“Board”) to invalidate, vacate, and set aside Resolution No. 14-211, adopted on May 13, 2014,  
5 which establishes a fee structure relative to fire suppression services for Mariposa County  
6 Service Area No. 3 (hereinafter “CSA No. 3”).

7                   Petitioners contend that the “special assessment” fee structure established by the Board  
8 violates the Constitution of the State of California, as amended by Proposition 218. The grounds  
9 for this contention are that the special assessment adopted and imposed by the Board violates the  
10 provisions of the California Constitution, based on the plain language of Article XIII D, sections  
11 2 and 4. Petitioners contend that the special assessment is unconstitutional on its face and as  
12 applied to the taxpayers of the County of Mariposa and is, in fact, a de facto unconstitutional tax  
13 for general benefits provided to the residents of the County outside the Town of Mariposa.

14                   Therefore, Petitioners petition this Court for a writ of traditional mandate and for such  
15 other relief prayed for herein as the Court deems proper in the circumstances to invalidate,  
16 vacate, and set aside Resolution No. 14-211. Petitioners also seek declaratory relief, pursuant to  
17 CCP section 1060, in order to determine and otherwise confirm that the \$80.00 annual  
18 assessment to be collected from the target parcels is property unconstitutionally taken from the  
19 parcel owners on which a structure worth at least \$10,000.00 is situated; and injunctive relief  
20 under CCP sections 526a and 527 et seq. to enjoin respondent Board from collecting any annual  
21 assessments of \$80.00 for each parcel bearing a structure valued at \$10,000.00 and further  
22 barring Respondents from retaining any and all such \$80.00 fees per parcel collected, for costs  
23 of suit and attorney’s fees pursuant to CCP sections 1021.5, Civil Code section 1947.15, and  
24 Govt. C. section 800.

25                   **II.       PARTIES**

26                   Petitioner William E. Davis, is a resident, property owner , and taxpayer within the  
27 jurisdiction of the Respondent BOS and is the former duly elected Auditor for the County of  
28 Mariposa. Petitioner Citizens for Constitutional Government (hereinafter “CCG”) is a  
California unincorporated association consisting of individual residents, property owners, and  
taxpayers within the jurisdiction of the County of Mariposa. [Verified Petition, p. 3, lines 16-  
25]

Respondent Board is comprised of a five-member Board of Supervisors, referred to as

1 the "Mariposa County Board of Supervisors." Each member of the Board is elected by the  
2 residents residing within the boundaries of a designated geographical boundary known as a  
3 "District" of Mariposa County, or are otherwise appointed to fill a vacancy until the next  
4 election. The respondent Board, having served Mariposa County since its formation in 1850,  
5 functions substantially in a legislative or quasi-legislative capacity by adopting resolutions  
6 affecting the imposition of taxes and/or fees on those persons residing within the boundaries of  
7 the County. Respondent Board derives its authority from the California Health and Safety Code  
8 Section 13800 *et seq*, commonly referred to as the "Fire District Law of 1987" and/or the  
9 Bergeson Fire Service District Law when adopting binding resolutions affecting the formation  
10 of benefit assessment districts for fire protection. Respondent Board is also empowered and  
11 required to establish assessments according to risk as set forth in Govt. C. section 50078.2 *et*  
12 *seq*.

13 The Supervisors who voted unanimously in favor of Resolution No. 14-211 on May  
14 13, 2014, included the maker of the motion, Supervisor Janet Bibby; second by Supervisor Lee  
15 Stetson; and Supervisors Kevin Cann, John Carrier, and Merlin Jones. [AR156]

### 16 **III. STANDING**

17 All Petitioners own parcels which have been subjected to the respondent Board's  
18 decisions and actions regarding the Respondent Board's attempting to establish a benefit  
19 assessment district, and imposing and collecting new taxes on the properties of Petitioners and  
20 other property owners in the County; and all Petitioners voted against the "special assessment"  
21 in the recorded vote recorded by the Board at the public hearing on May 13, 2014.  
22 Consequently, Petitioners have standing to bring this action before the Court.

### 23 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 On January 14, 2014, the Board initiated action to cancel and replace the existing  
25 "special assessment" with a new "special assessment". The CAO assured all parcel owners that  
26 their assessment would not change. All properties would still pay \$80 per year. [AR089-093]

27 Based on these and other representations of the Board, Petitioner William E. Davis  
28 appeared and objected to the proposed Engineer's Report, based on the fact that the new  
proposed "special assessment" would still violate the provisions of Proposition 218. He put the  
Respondent Board on notice that the new "special assessment" would still be unconstitutional.

1 Further, Petitioner informed and advised the Respondent Board that there were  
2 lawful alternatives to the adoption of a “special assessment,” including the adoption of a special  
3 tax or a general tax. [AR052-0057]

4 Moreover, Mr. Davis and the other members of CCG have returned their ballots  
5 voting against the “special assessment” which is the subject of this action, and the County has  
6 the ballots preserved with the names and addresses of those property owners who voted against  
7 the proposed “special assessment” to document their opposition to the ballot measure, as well as  
8 the payment of the invalid tax challenged herein. [AR037, lines 10-21]

## 9 **V. STANDARD OF REVIEW**

### 10 **A. Overview of Proposition 218 and Article XIII D**

11 In *Beutz v. County of Riverside* (2011) 184 Cal.App.4th 1516, 109 Cal.Rptr.3d 851,  
12 the Fourth District Court of Appeal sets forth an Overview of Proposition 218 and Article XIII  
13 of the California Constitution as follows:

14 “In 1996, California voters adopted Proposition 218, known as the Right to Vote on  
15 Taxes Act, which added articles XIII C and XIII D to the California Constitution.  
16 (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th  
17 830, 835-837 [102 Cal.Rptr.2d 719, 14 P.3d 930].) In *Howard Jarvis Taxpayers Assn. v.*  
18 *City of Riverside* (1999) 73 Cal.App.4th 679 [86 Cal.Rptr.2d 592] (Fourth Dist., Div.  
19 Two), this court explained the genesis of Proposition 218:

20 "Proposition 218 can best be understood against its historical background, which begins  
21 in 1978 with the adoption of Proposition 13. 'The purpose of Proposition 13 was to cut  
22 local property taxes. [Citation.] [Citation.] Its principal provisions limited ad valorem  
23 property taxes to 1 percent of a property's assessed valuation and limited increases in the  
24 assessed valuation to 2 percent per year unless and until the property changed hands.  
25 (Cal. Const., art. XIII A, §§ 1, 2.)

26 "To prevent local governments from subverting its limitations, Proposition 13 also  
27 prohibited counties, cities, and special districts from enacting any special tax without a  
28 two-thirds vote of the electorate. (Cal. Const., art. XIII A, § 4; [citation].) It has been  
held, however, that a special assessment is not a special tax within the meaning of  
Proposition 13. [Citation.] Accordingly, a special assessment could be imposed without a  
two-thirds vote.

29 "In November 1996, in part to change this rule, the electorate adopted Proposition 218 ....  
Proposition 218 allows only four types of local property taxes: (1) an ad valorem  
property tax; (2) a special tax; (3) an assessment; and (4) a fee or charge. (Cal. Const.,  
art. XIII D, § 3, subd. (a)(1)-(4); see also Cal. Const., art. XIII D, § 2, subd. (a).) It  
buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by

1 placing analogous restrictions on assessments, fees, and charges." (*Howard Jarvis*  
2 *Taxpayers Assn. v. City of Riverside*, *supra*, 73 Cal.App.4th at pp. 681-682; see  
3 *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles*, *supra*, 24 Cal.4th at  
4 pp. 835-842 [discussing the origins of Proposition 218 and its intent to limit a local  
5 government's ability to impose taxes, assessments, and fees on real property owners].)"

6 [184 Cal.App.4th, at 1520-1521]

### 7 **B. Discussion of Special Benefit vs. General Benefits**

8 Similarly, with respect to article D, the *Beutz* court summarizes the Supreme Court's  
9 explanation of the nature and distinguishing features of a special assessment in *Knox v. City of*  
10 *Orland* (1992) 4 Cal.4th 132 ("*Knox*"). *Beutz*, *supra*, pp. 1517-1518. Most important for this  
11 court for the case at bar, the *Knox* court is cited for the following authority: "Therefore, while a  
12 special assessment may, like a special tax, be viewed in a sense as having been levied for a  
13 specific purpose, a critical distinction between the two public financing mechanisms is that a  
14 special assessment must confer a special benefit upon the property that conferred generally.  
15 (*Ibid.*, fn. omitted) "*Knox*, *supra*, at 4 Cal.4th at p. 142 (*Beutz*, *supra*, at 1518)

16 In addition, *Beutz* cites *SVTA* as authority for the "requirement that the agency  
17 "separate the general benefits from the special benefits conferred on a parcel (art. XIII D, §4,  
18 subd. (a)) helps ensure that the special benefit is met. "Because only special benefits are  
19 assessable, and public improvements often provide both general benefits to the community and  
20 special benefits to a particular property, the assessing agency must first 'separate the general  
21 benefits from the special benefits conferred on a parcel" and impose the assessment only for the  
22 special benefits." (*Silcon Valley*, *supra*, 44 Cal.4th at p. 443.)" *Beutz*, *supra*, at p. 1522-1523

### 23 **C. Special Benefit and Proportionality Requirements Interrelated**

24 The *Beutz* court also focuses on the key issues raised by Mr. Davis and the other  
25 Petitioners in the instant case, as follows: "The special benefit and proportionality requirements  
26 are perhaps best understood as being interrelated, not separate, requirements. The proportionality  
27 requirement ensures that the *aggregate* assessment imposed on *all* parcels is distributed *among*  
28 all parcels *in proportion* to the special benefits conferred on *each parcel*. (See *Town of Tiburon*  
*v. Bonander* (2009) 180 Cal.App.4th 1057, 1080-1985 (*Tiburon*) [varying amounts assessed on  
district parcels for the costs of undergrounding utility line violated the proportionality  
requirement because the amounts individually assessed were not based on the special benefits

1 the undergrounding project would confer on each assessed parcel].) The special benefit  
2 requirement is thus part and parcel of the proportionality requirement. It is useful however, to  
3 separately discuss special benefits in order to ascertain whether the public improvement or  
4 property related service underlying the assessment confers *any* special benefits on district  
5 parcels in the first place. (*Silicon Valley, supra*, 44 Cal.4th at pp. 450-456 [discussing whether  
6 assessment fund acquisition and maintenance of open space in County of Santa Clara conferred  
any special benefits on assessed properties].)” *Beutz, supra*, at pp. 1522-1523

#### 7 **D. Burden of Proof is on the Government Agency**

8 The *Beutz* court confirms that, “under Proposition 218, the burden of proving  
9 an assessment meets the special benefit and proportionality requirements is on the local  
10 government agency imposing the assessment. (*Silicon Valley, supra*, 44 Cal.4th at pp. 447-448.)  
11 Section 4, subdivision (f) of article XIII D states. “In any legal action contesting the validity of  
12 any assessment, the burden shall be on the agency to demonstrate that the property or  
13 properties in question receive a special benefit over and above the benefits conferred on the  
14 public at large and that the amount of any contested assessment is proportional to, and no greater  
15 than, the benefits conferred on the property or properties in question.” This “burden...to  
16 demonstrate’ provision” is to be construed “liberally in light of [Proposition 218’s] other  
17 provisions[.]” (*Silicon Valley, supra*, at p. 448.)” *Beutz, supra*, at p. 1524

#### 18 **E. The Court is to Exercise its Independent Judgment in this Case**

19 “Finally, because Proposition 218’s requirements involve matters of constitutional  
20 interpretation, or mixed facts of law and fact that implicate constitutional rights, courts are to  
21 “exercise their independent judgment in reviewing local agency decisions that have determined  
22 whether benefits are special and whether assessments are proportional to special benefits within  
23 the meaning of Proposition 218. [Citations]” (*Silicon Valley, supra*, 44 Cal. 4th at pp. 448-450)”  
24 *Beutz, supra*, at 1524

25 Thus, unlike other actions brought against public agencies in California, the  
26 California Supreme Court has held, in cases involving interpretation of the California  
27 Constitution, “...courts should exercise their independent judgment in reviewing whether  
28 assessments that local agencies impose violate article XIII D.” *Silicon Valley Taxpayers*

1 *Association, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.App.4th 431, 442-  
2 443, 79 Cal.Rptr.3d 312, 187 P.3d 371 (hereinafter referred to as “SVTA”).

3 **VI. SUMMARY OF FACTS**

4 Since the related case to this action, *Davis v. Board of Supervisors of Mariposa County*  
5 (Mariposa County Superior Court Case No. CV56309), is still pending, Petitioners hereby  
6 request the Court to take judicial notice of the file in that case, pursuant to Evidence Code  
7 section 452, subd. (d) and to have the papers and pleadings be judicially noticed and included in  
8 the record before this Court.

9 In the companion case, Petitioners alleged and informed the Court that Respondent  
10 board has attempted to form a special benefit assessment district (County Service Area No. 3),  
11 comprising specified developed and undeveloped parcels within the boundaries of Mariposa  
12 County, but which special assessment district has not been lawfully formed for all of the reasons  
13 set forth hereinabove.

14 Mariposa County encompasses approximately 1,463 square miles upon which resides  
15 a population comprised of approximately 18,200 residents. Currently, twelve (12) stations  
16 staffed by sixty eight (68) volunteer firefighters provide fire protection and limited medical  
17 assistance within Mariposa County. The twelve (12) fire stations in Mariposa County function  
18 for the purpose of responding to medical emergencies, structural fires, automobile fires, and/or  
19 other fire emergencies both within and outside Mariposa County.

20 In early 2008, the Mariposa County fire chief sought acquisition of new fire equipment  
21 and facilities improvement in order to assist volunteer firefighters in responding to calls for fire  
22 suppression and medical assistance from the twelve departments located throughout the county.  
23 The chief urged Respondent board to form a ‘county service area’ through which funds could be  
24 channeled for purposes of buying new fire equipment and improving fire department facilities.

25 On March 18, 2008, respondent board took the preliminary steps to form County Service  
26 Area No. 3 as a special assessment benefit district supporting enhanced fire protection services.  
27 The benefit district would function as a conduit for channeling funds to purchase up-to-date fire  
28 equipment and to make improvement to the twelve (12) fire stations in Mariposa County.  
Respondent Board applied to a regional governmental agency, the Local Area Formation

1 Commission (LAFCo), which was required in order to form County Service Area (“CSA”) No.  
2 3.

3 On May 20, 2008, LAFCo held a public hearing and approved the formation of CSA No.

4 3.

5 On May 27, 2008, Respondent Board held a public meeting. During the meeting, the  
6 Respondent Board represented that the proposed special assessment district—County Service  
7 Area No. 3—would not become a “benefit district” described in Govt. C. section 56018. In  
8 addition, the owners of those lands would be entitled, under state or federal statutes or the  
9 California Constitution or the U.S. Constitution, to notice by mail or personal service and  
10 hearing prior to the inclusion of their land within the district.

11 By Resolution No. 08-222, the Respondent Board directed the Mariposa County  
12 Clerk to provide notice by publication, pursuant to Govt. C. section 6061. The County Clerk  
13 published and mailed notice under Govt. C. section 54986(a). The Board disseminated a ballot  
14 and a one-page document purported to be an “Engineer’s Report” to each of the affected and  
15 noticed property owners residing within CSA No. 3.

16 The property owners had 45 days to vote by filling out and returning their ballots.  
17 Once received, the ballots were to be opened and counted at public meeting on July 22, 2008.  
18 Based on the vote by the property owners, Respondent Board would conclude the hearing by  
19 action on whether to establish County Service Area No. 3 and impose the special assessment on  
20 all owners of improved parcels residing therein.

21 By Resolution No. 08-222, the Board directed the Mariposa County Clerk to provide  
22 notice by publication pursuant to GC section 6061. The County Clerk published and mailed  
23 notice under GC section 54986(a). Respondent board disseminated a ballot and a one-page  
24 document purported to be an “Engineer’s Report” to each of the affected and noticed property  
25 owners residing within CSA No. 3. The property owners had 45 days to vote by filling out and  
26 returning their ballots.

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28 22, 2008. Based on the vote by the property owners, Respondent Board would conclude the  
hearing by acting on whether to establish County Service Area No. 3 and impose the special



1 assessment on all owners of improved parcels residing therein.

2 Respondent Board's reference to Article XIII of the California Constitution claiming  
3 adherence to Article XIII D requires Respondent Board to identify all parcels designated to  
4 receive a special benefit and impose a special assessment; to-wit, an assessment proportional to  
5 the benefit received versus the entire assessment) along with Govt. C. sections 25210.77a (since  
6 repealed) authorizing respondent board by ordinance to collect the special assessment concurrent  
7 with *ad valorem* real property taxes); 54985 (authorizing the Board to adjust the special  
8 assessment to recover enforcement costs); and 54986 (before imposing the adjustment to recover  
9 enforcement costs, the board shall hold at least one public meeting).

9 Respondent Board verified and approved a one-page document described as an  
10 "Engineer's Report." The director of public works had lodged this "Engineer's Report" with  
11 Respondent Board . A true and correct copy of this one page report is attached as Exhibit One  
12 to the Petition on file in the related Case No. CV56309 and is incorporated by this reference.  
13 Because the one-page Engineer's Report failed to identify any special benefit on for the parcels  
14 assessed, it violated *ab initio* Article XIII, section 4(b) of the California Constitution. Further,  
15 the "detailed" Engineer's Report did not assign the cost of the benefit to the assessed parcels in  
16 proportion to the entire cost of the enhanced services to be funded by the special assessment.

16 As a result, all benefits of the fire assessment---according to the one-page Engineer's  
17 Report definition---constitute a special benefit. The report levied an annual assessment of  
18 \$80.00 equally on every developed parcel. A "developed" parcel is defined as one on which is  
19 situated a structure valued at greater than \$10,000.00 in County Service Area No. 3---which is  
20 virtually all of Mariposa County. [save for a particularly small area encompassed by the  
21 Mariposa Public Utilities District (MPUD) in the town of Mariposa.] In other words,  
22 Respondent Board disregarded the proportionality requirement of Article XIII D, sections 2 and  
23 4 of the California Constitution. [For example, a hotel on a parcel valued at \$1,000,000.00 is  
24 assessed at the same rate as a parcel valued at \$50,000.00 on which sits a manufactured mobile  
25 home.]

25 By assigning the same fee of \$80.00 to each improved parcel, the Board estimated  
26 that the assessment would generate \$537,028.00 in new revenues. Earmarking a portion of  
27 general fund revenues --courtesy of Respondent Board -- would yield another \$100,000.00.  
28 These amounts combine to provide an annual budget of \$637,028.00. This budget has funded

1 the acquisition of new fire trucks and related fire suppression equipment along with covering the  
2 cost for capital improvements to all 12 of the county's fire stations in County Service Area No.  
3 3. However, the original "Engineer's Report" failed to separate the general benefits from the  
4 special benefits conferred on a parcel.

5 As a result, all parcels in CSA No. 3, which is essentially the entirety of Mariposa  
6 County, excluding a tiny island known as MPUD, received the same general benefit and were  
7 taxed at the same rate. Earmarking all fire stations as intended beneficiaries in Mariposa County  
8 also breaches California Constitution, Article XIII. D, Sections 2 and 4, in that no special benefit  
9 is provided to specific parcels.

10 Govt. C. 50078.2 (a) requires that respondent board assess parcels and structures  
11 based on various criteria to reflect degrees of risk. Yet no such proportional relationship  
12 between cost and benefit could be found anywhere in the one-page document characterized as an  
13 "Engineer's Report." (See Exhibit One in the related action.) In truth the so-called Engineer's  
14 Report was simply not "detailed" in any respect.

15 At the July 22, 2008, public hearing, Respondent Board directed the counting of  
16 ballots turned in by the due date. Of the 7,112 ballots mailed out to all affected property owners  
17 in Mariposa County, some 3,190 ballots were returned and opened at the public hearing. Of the  
18 returned ballots, 1,939 parcel owners voted in favor of being assessed \$80.00 per year while  
19 1,144 opposed the assessment. There were 107 ballots deemed blank or otherwise voided.  
20 Respondent Board continued the hearing until July 25, 2008.

21 Respondent Board, by Resolution No. 08-340, adopted July 25, 2008, imposed on all  
22 developed parcels, respectively, the same annual assessment of \$80.00 so that each and every  
23 developed parcel received the same overall benefit of improved fire protection. Within County  
24 Service Area No. 3 (Mariposa County), fire stations were slated for renovation while fire  
25 equipment was earmarked for major upgrade. Such benefits favorably affect the entire public  
26 residing in Mariposa County and constitute "general benefits."

27 Since enacted in mid-2008, the annual fire assessment was routinely reauthorized by  
28 Respondent Board. In Resolution No. 13-299, on July 16, 2013, the Board baldly claimed to be  
collecting the fire assessment consistent with Article C and D of the California Constitution.  
Whereupon, Respondent Board authorized the continued collection of the \$80.00 special

1 assessment affecting every developed parcel—regardless of structure size or value--in Mariposa  
2 County.

3 Respondent Board claimed that the special assessment would be required in order to  
4 continue to meet operating expenses and to purchase and/or lease more supplies for more capital  
5 projects essential to maintain a desired level of fire protection throughout County Service Area  
6 No. 3--all of Mariposa County except the MPUD. At no time has Respondent Board adopted a  
7 resolution establishing a variable assessment scale based on fire danger risk as required pursuant  
8 to Govt. C. section 50078.2 (a). Respondent Board continues to maintain a single charge of  
9 \$80.00 per parcel, ignoring entirely Govt. C. § 50078.2 (a) along with Section 2 and 4 of Article  
XIII D of the California Constitution.

10 In early 2013, Petitioner Davis, in his capacity as Mariposa County Auditor, advised  
11 the Board that the special assessment for County Service Area No. 3 violated the California  
12 Constitution as amended by Proposition 218. Moreover, Mr. Davis supported his assertion of  
13 unconstitutionality with California Appellate Court and Supreme Court decisions. However, in  
14 April of 2013, the County Administrative Officer (CAO) represented to Respondent Board that  
15 the special assessment was valid. The CAO supplied no basis for his assertion that the special  
16 assessment was constitutional and cited no legal precedent by way of statute or case law. As a  
17 result of the CAO's presentation and recommendation, Respondent Board decided to continue to  
18 impose and collect the assessment. Because Petitioner had taken an oath of office to uphold the  
19 California Constitution, Mr. Davis had no other option but to challenge the special assessment in  
20 court.

21 In November of 2013, Petitioners filed a legal challenge to the tax in the Mariposa  
22 County Superior Court. The challenge contended that: (a) fire protection, in and of itself, is a  
23 general benefit not a special benefit, (b) that even if it were possible to be a special benefit, the  
24 County failed to separate the "general benefit" from the "special benefit," as required by the  
25 California Constitution, Article XIII D, and (c) even if the benefit had been entirely a "special  
26 benefit," the County failed to assess the individual parcels proportionally as to the benefit each  
27 would receive.

28 Due to the filing and merits of the related action filed by Petitioners, on January 14,

1 2014, the Board initiated action to cancel and replace the existing “special assessment” with a  
2 new “special assessment”. The CAO assured all parcel owners that their assessment would not  
3 change. All properties would still pay \$80 per year. [AR033-037] Petitioners respectfully  
4 invite the Court’s and counsel’s attention to the statements made by CAO Benson at the January  
5 14, 2014 Board meeting, *prior to* the preparation of the new Engineer’s Report approved at the  
6 May 13, 2014 Board hearing, as follows:

7 “In the end, assuming that the property owners do re-affirm what they did in 2008, we  
8 will have a new assessment in place, they will have received a new engineer’s report  
9 with all the details, but I fully expect, although we can’t be absolutely sure until the  
10 engineer is done with their report, that all of the parcels within the county that are  
11 currently subject to the \$80 assessment, uh, that we will once again have that same \$80  
12 assessment on all of the parcels. Things really will not change except they’ll have a, a  
13 \$26,500 report to, uh, read over and once again help them make their decision.”  
14 [AR035:21-036:3]

15 Based on the representations of the CAO to the Board, Petitioner William E. Davis  
16 appeared and objected to the new proposed “special assessment: and put the Respondent Board  
17 on notice that the new “special assessment” would still be unconstitutional. Further, Petitioner  
18 informed and advised the Respondent Board that the lawful alternatives were a special tax or a  
19 general tax. [AR052-057]

20 On or about March 10, 2014, the new “Engineer’s Report” was completed---and  
21 disclosed no change in the parcel assessments---just as projected by CAO Rick Benson.  
22 Notifications and ballots were mailed out to 7,000 effected parcel owners, and a series of  
23 community meetings were held. [See “Exhibit A” attached to the Petition filed in this action on  
24 December 23, 2014]

25 On May 13, 2014, a public meeting was held before the Respondent Board, at which  
26 the votes in support of and those protesting cancelling the old “assessment” and implementing  
27 the new “assessment” were counted. The total votes counted were 3,394. The proposition  
28 passed by a vote of 2,066 (61%) for and 1,328 (39%) against. The money collected under the  
old “assessment” was applied to the first year of the new “assessment”. The Board of  
Supervisors then passed resolution 14-211 that authorized the cancellation of the old  
“assessment” and the imposition of the new “assessment”. The vote was 5-0 in favor of the  
Resolution 14-211. [AR150-152]

1  
2           After having received notice that the new assessment had been imposed and levied  
3 on the parcels owned by Petitioners and other property owners in the County on November 1,  
4 2014, Petitioners filed the instant action on December 23, 2014 and served it on the County  
5 Clerk on the same day.

6           **VII. ARGUMENT**

7  
8           **A. Petitioners are entitled to the issuance of a Writ of Traditional Mandate**

9           Petitioners contend that the new “assessment” violates the provisions of Article XIII  
10 D of the California Constitution, as construed by the California Courts of Appeal and the  
11 California Supreme Court reported decisions interpreting sections 2 and 4 of that Article.

12           California Code of Civil Procedure (CCP) section 1085 provides:

13           “(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation,  
14 board, or person, to compel the performance of an act which the law specially enjoins, as  
15 a duty resulting from an office, trust, or station, or to compel the admission of a party to  
16 the use and enjoyment of a right or office to which the party is entitled, and from which  
the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

17           Mandamus is brought upon verified petition of a beneficially interested party. “[T]here  
18 must be a clear, present, ministerial duty upon the part of the respondent and a correlative clear,  
19 present, and beneficial right in the petitioner to the performance of that duty.” [Citation]  
20 This extraordinary writ ‘must be issued, in all cases where there is not a plain, speedy, and  
21 adequate remedy, in the ordinary course of law.’ [CCP section 1086; *Sego v. Santa Monica*  
22 *Rent Control Bd.* (1997) 57 Cal.App.4th 250, 255 (authorizing a trial court to issue a writ of  
23 mandate 'to compel the performance of an act which the law specifically enjoins based on a  
24 verified petition of a beneficially interested party provided that a clear, present, ministerial duty  
25 upon the part of the respondent and a correlative clear, present, and beneficial right in the  
26 petitioner to the performance of that duty, which writ 'must be issued, in all cases where there is  
not a plain, speedy, and adequate remedy, in the ordinary course of law).]

27           A writ of mandate pursuant to CCP section 1085 is necessary because Petitioners and  
28

1 other parcel owners have been, and will continue to be, subjected to a multiplicity of expensive  
2 and burdensome administrative actions that are not authorized by law and are in conflict with  
3 Civil Code (“CC”) section 1954.53.

4 A writ of mandate pursuant to CCP section 1085 is further necessary because Petitioners  
5 have been, are now being, and will continue to be required to pay an annual alleged ‘special’  
6 assessment of \$80.00 for each parcel that each of them, respectively, owns as if there were  
7 conferred upon each a special benefit. Yet the benefit provided to the parcels in County Service  
8 Area No. 3 constitutes a general benefit affecting all lands and residences therein regardless of  
9 land value and land ownership. The Engineer’s Report fails to calculate and provide a  
10 quantitative analysis of the special benefit for each of the various parcels impacted and to  
11 prepare a quantified analysis of the proportional value of the special benefit provided to each  
12 parcel, as compared with the general benefit provided by the assessment imposed and levied on  
13 each parcel. The Engineer’s Report, which was approved by Board when it adopted Resolution  
14 No. 14-131 on March 25, 2014 the disclosure document required for public review by the  
15 Affected property owners failed to have the elements required by Article XIII D of the  
16 California Constitution. [See Engineer’s Report at AR094-115 and CAO Handout at AR116-  
17 120.]

18 **B. The Engineer’s Report Does not Comply with the Requirements of  
19 California Constitution Article XIII D**

20 The Engineer’s Report fails to provide the information required by the California  
21 Constitution in the following ways.

22 **1. The Engineer’s Report Fails to Identify Each Parcel Affected by the Proposed  
23 Special Assessment and the Value of the “Special Benefit” Received by Each  
24 Property Owner**

25 A careful review of the Engineer’s Report approval by Resolution 14-131 reveals  
26 that the Report does not list or identify each parcel burdened by the proposed “special  
27 assessment,” nor does it disclose what the specific “special benefit” is to be received by each  
28 parcel and its owner. Without this disclosure and analysis the Engineer’s Report is doomed  
from its inception, because this information and analysis is required for the comparison with the  
general benefit, in order to quantify, calculate, and comply with the proportionality requirement

1 cite by the Court in *SVTA* and *Beutz*, cited hereinabove; see, also, art. XIII D, §4(b) ["All  
2 assessments shall be supported by a detailed engineer's report prepared by a registered  
3 professional engineer certified by the State of California."]

4 As the Supreme Court states in *SVTA*, citing *Knox*, "The rationale of special  
5 assessment[s] is that the assessed property has received a special benefit over and above that  
6 received by the general public. The general public should not be required to pay for special  
7 benefits for the few, and the few specially benefitted should not be subsidized by the general  
8 public. "

9 The Supreme Court further opines: "Because only special benefits are assessable, and  
10 public improvements often provide both general benefits to the community and special benefits  
11 to a particular property, the assessing agency must first "separate the general benefits from the  
12 special benefits conferred on a parcel" and impose the assessment only for the special benefits.  
13 (Art. XIII D, §4, subd.(a).)" *SVTA, supra*

14 Therefore, it is axiomatic that the Engineer's Report cannot satisfy the Court's  
15 requirements *ab initio* without identifying all of the specific parcels to be burdened and disclose  
16 what special benefits will accrue to each one. This task has not been performed in the  
17 Engineer's Report or elsewhere in the record; thus, the Engineer's Report does not comply with  
18 art. XIII D, §4(b).

## 19 **2. The Engineer's Report Does Not Meet the Requirements of California 20 Constitution, Article XIII D, §4, Subd. (a)**

21 The California Constitution provides that "[n]o assessment shall be imposed on any  
22 Parcel which exceeds the reasonable cost of the proportional special benefit conferred on that  
23 parcel." (Cal. Const. , art. XIII D, §4, subd.(a).) *Dahms v. Downtown Pomona Property et al.*  
24 ("*Dahms*") (2009) 174 Cal.App.4th 708, 715 The Court further states:

25 "The proportionate special benefit derived by each identified parcel shall be determined  
26 in relationship to the entirety of the capital cost of a public improvement, the  
27 maintenance and operation expenses of a public improvement, or the cost of  
28 the **property** related service being provided." (*Ibid.*) "'Special benefit' means a particular  
and distinct benefit over and above general benefits conferred on real **property** located  
in the district or to the public at large. General enhancement of **property** value does not  
constitute 'special benefit.'" (Art. XIII D, §2, subd. (i).): *Dahms, ibid.*

Petitioners contend that the Engineer's Report fails to identify and list the specific

1 individual parcels that are subject to the special assessment and their respective values and  
2 increased values, based on the specific “special benefits” and the relationship of such  
3 specific values to the accurate cost of the public improvement, the maintenance and operation  
4 expenses of the public improvement, or the cost of the property related service being provided.  
5 Again, the County cannot accurately make the necessary quantitative evaluation and the  
6 determination of proportionality between special benefit, cost, and general benefit without  
7 having the itemized information required by Article XIII D, §2. subd. (i) See, *SVTA, Beutz*, and  
8 *Dahms, supra*.

9 **3. The Engineer’s Report Improperly Characterizes the General Benefit of Fire  
10 Suppression as a “Special Benefit”**

11 In the Engineer’s Report, the consultant, Harris & Associates, improperly ascribes the  
12 “general benefit” of fire suppression as a “special benefit.” As Mr. Davis objected in his oral  
13 testimony at the January 14, 2014 Board meeting, the Petitioners contend that the express  
14 language of Article XIII D, §4(a); to-wit, “...Only special benefits are assessable, and an agency  
15 shall separate the general benefits from the special benefits conferred on a parcel.”

16 **4. Respondent BOS’s adoption of Resolution No. 14-211 is facially invalid**

17 In summary, Petitioners contend that Respondent Board’ Resolutions No. 14-211  
18 is invalid on its face based on the following deficiencies:

- 19 a) failing to identify all parcels expected to receive a special benefit;
- 20 b) failing to demonstrate a rational proportional relationship between assessment amount  
21 and benefit to the parcel;
- 22 c) failing to distinguish and otherwise provide a special benefit distinct and separate from  
23 the general benefits applicable to all areas and residents of Mariposa County; and
- 24 d) failing to provide a detailed Engineer’s Report that offers a valid foundation for  
25 imposing a special assessment on the selected target parcels.
- 26 e) the resolutions adopted by Respondent Board violate Govt. C. section 50078.2 (a).
- 27 f) the absence of a total cost to be allocated results in the Respondent Board’s  
28 improper decision to build stations of the most expansive nature, with the latest fire  
equipment, based on the amount of assessments collected irrespective of whether the  
station improvements and new equipment provided any additional special benefit.  
The stations included kitchens and sleeping quarters, which do not provide any  
special benefit to the specified parcels. Respondent Board then divided that gross  
amount needed to buy the equipment and improve the buildings by the total number



1 of assessed parcels, as opposed to determining the special benefit provided to each  
2 separate parcel. Thus, by adopting Resolution 14-211, the Respondent BOS violated  
Article XIII D., sections 2 and 4 of the California Constitution.

3 **VIII. CONCLUSION**

4 For the foregoing reasons, Petitioners request the Court to issue a writ of  
5 traditional mandate or other appropriate writ, pursuant to Code of Civil Procedure section 1085  
6 or 1094.5, commanding, directing, and ordering Respondent Board of Supervisors of the County  
7 of Mariposa vacate and set aside its Resolution No. 14-211; and that the Court issue a writ of  
8 traditional mandate or other appropriate writ, pursuant to Code of Civil Procedure section 1085  
9 or 1094.5, commanding, directing, and ordering Respondent Board of Supervisors of the County  
10 of Mariposa to make an accounting and refund all assessments levied and/or otherwise collected  
11 pursuant to Resolutions Nos.08-340, 13-299, and 14-211 and account for and refund every  
12 \$80.00 annual special benefit assessment collected or otherwise taken from each affected parcel  
13 owner that was been authorized by and collected pursuant to the adoption and implementation of  
14 Resolution No. 08-340, Resolution No. 13-299, and/or Resolution No. 14-211.  
15

16 Further, Petitioners request the Court to issue an Order directing the Respondent to  
17 publish a written notice in a newspaper of general circulation in the County of Mariposa within  
18 ten (10) calendar days from the date of service of the Writ of Mandate on the Clerk of the  
19 Respondent Board of Supervisors notifying the public of the Court's Order directing the refund  
20 of the assessments, late fees, interest, and/or penalties to the parcel owners from whom they  
21 were collected and that the Respondent provide the funds necessary for the County Auditor to  
22 mail a Supplemental Tax Bill to each parcel owner from whom an assessment, late charge,  
23 interest, and/or penalties were collected informing each parcel owner of the Judgment entered by  
24 the Court and the parcel owner's right to recover any and all payments made to the County of  
25 Mariposa pursuant to Resolution Nos. 13-299 and 14-211.  
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27 Finally, Petitioners request the Court to issue its Order directing the Respondent to  
28 file a written return on the writ of traditional mandate within sixty (60) days from date of service

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on the Clerk of the Board of Supervisors of the County of Mariposa confirming that the Respondent has complied with the Court's Order that the assessments, interest, late fees, and/or penalties collected pursuant to Resolution Nos. 08-340, 13-199 and 14-211 have been refunded to the parcel owners from whom they were collected.

**LAW OFFICES OF RICHARD L. HARRIMAN**

Dated: August 17, 2015

  
RICHARD L. HARRIMAN  
Attorney for Petitioners

**PROOF OF SERVICE**  
(Code Civ. Proc., §§ 1013a, 2015)

STATE OF CALIFORNIA, COUNTY OF BUTTE

I am employed in the County of Chico, State of California. I am over the age of 18 and not a party to the within action; my business address is 1078 Via Verona Drive, Chico, California 95973-1031.

On August 17, 2015, I served the following document(s) described as:

**PETITIONERS' AND PLAINTIFFS' MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF WRIT OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

in the above-entitled action

/ X / By placing a true and correct copy of the above-referenced document in an envelope with postage prepaid in the mail at the U.S. Postal Service facility at Chico, California addressed as follows:

Michael G. Colantuono, Esq.  
Charles K. LaPlante, Esq.  
Colantuono, Highsmith & Whatley, PC  
11364 Pleasant Valley Rd  
Penn Valley, CA 95946  
Fax No. (530) 432-7356  
Email: mcolantuono@chwlaw.us  
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Steven W. Dahlem, Esq.  
Mariposa County Counsel  
Post Office Box 189  
Mariposa, CA 95338  
Fax No. (209) 966-5147  
Email: sdahlem@mariposacounty.org

/ \_\_\_ / By OnTrac overnight delivery at Chico, California

/ X / With copies sent via email transmission to the addressee(s) hereinabove.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is executed on August 17, 2015 at Chico, California.

  
RICHARD L. HARRIMAN