

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 08/16/2019

TIME: 03:17:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00023413-CU-MC-CTL** CASE INIT.DATE: 07/14/2015

CASE TITLE: **Mark Coziahr vs Otay Water District [E-File]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 08/16/2019 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

FINAL RULING

Plaintiffs Daniel Patz and Joan Mann Chesner's motion for class certification is granted. The class shall be defined as "All single-family residential customers of the City San Diego who received water service after a date to be determined by the San Diego Superior Court based upon the applicable limitations period." This definition may later be revised. However, at this time while the court is addressing the legal issues, the court finds its proper to proceed as a class action.

Plaintiffs are challenging a uniform policy both in this suit, and the severed action *Coziahr v. Otay Water District*. As to the declaratory relief cause of action, plaintiffs seeks a declaration the overall water rate structure operates as an illegal tax, fee, or charge in violation of article XIII D of the California Constitution and that the revenues defendant derives from its water rates exceed the funds required to provide the property related service, in violation of article XIII D, section 6, subdivision (b)(I). Plaintiffs' position has merit that if the uniform policy is unconstitutional, then that is true for everyone in the class; if the City is correct that its uniform policy is constitutional, then that is also true for everyone in the class.

The question under this formula as to ascertainability is answered-it will include all single-family residential customers who received water service from the City of San Diego. The time period under the class definition is more appropriately challenged outside of the class certification motion. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 440-441, as modified (Aug. 9, 2000).)

The common legal issue is whether the new policies are unconstitutional. At *this* time, there is little conflict with the class representatives and class counsel in reaching the legal answer as to whether the policy is unconstitutional. At a minimum, the declaratory relief claims applied retrospectively does not raise conflict issues.

Whether the named plaintiffs must exhaust their legal remedies is a question on the merits, rather than

within a motion for class certification.

Eddie C. Sturgeon

Judge Eddie C Sturgeon