



HOWARD JARVIS
TAXPAYERS
ASSOCIATION



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May 6, 2013

Sean Rabe
City Manager
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

Re: Increase in ACES Solid Waste Collection Fees

Dear Mr. Rabe,

We were contacted by one of our members regarding the ACES sewer rate increase for the City of Sutter Creek. Our member contends that affected property owners and tenants submitted timely written protests sufficient to defeat the proposed rate increase. He is concerned, however, based on his own research, that Sutter Creek invalidated the successful protest by artificially inflating the total number of parcels needed to defeat the increase, and by disqualifying valid protests.

Under the terms of a settlement agreement in *Pressnall v. City of Sutter Creek*, the City agreed to the following: “[T]he City shall not increase or impose new solid waste fees or charges by contract or otherwise, by or through any City-designated franchisee, including but not limited to ACES, unless: (I) the City complies with the procedures set forth in Article XIII D, Section 6(a)(1) and (2), of the California Constitution ...” Article XIII D, section 6(a)(2) provides that, where timely written protests are presented on behalf of a majority of the affected parcels, the proposed rate increase cannot be imposed.

To determine whether Sutter Creek inflated the number of protests needed to defeat the proposed rate increase, our member obtained the ACES customer list and the labels the City used to mail notices to the property owners. He researched every property on both lists and discovered that approximately 90 parcels on the City’s label list were ineligible to participate in the protest either because the parcel is undeveloped, the parcel does not receive garbage service, the parcel is not within the City, the parcel does not exist, or the parcel is listed more than once.

Our member was also skeptical about the number of protests the City disqualified. He tested approximately 50 of the more than 200 disqualified protests by cross-checking the list of valid protests, consulting the County Assessor’s records, and going door to door to ask the person who signed the protest whether he or she owns the parcel or is under contract with ACES for garbage service. While a few of the 50 were invalid duplicates, 43 of the 50 protests were not duplicates and had been signed either by a current owner of the parcel or by a tenant under contract with ACES for garbage service.

Since Government Code section 53755(b) requires that any written protest “filed by an owner or tenant of the parcel shall be counted in calculating a majority protest,” these protests should have been counted. The fact that 43 of 50 sampled protests were improperly disqualified suggests that most of the rejected protests should have been counted. It appears that in cases where the name on the ACES account is a business name (e.g., Acme Glass Co.) and the person who signed the protest was the business owner, the City rejected the protest. In other cases protests were rejected because one spouse is named on the ACES account and the other spouse signed the protest, or because a tenant is named on the ACES account and the owner signed the protest, or because the protester, despite being an ACES customer, was not on the ACES list.

If our member is correct in his calculations, 543 protests were needed to defeat the proposed garbage rate increase, and more than 543 valid protests were received by the City (not counting the additional disqualified protests that have yet to be tested). In other words, the protest was successful. The City has the burden to prove the accuracy of its calculations. Article XIII D, section 6(b)(5) states, “In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.”

By this letter, Howard Jarvis Taxpayers Association is requesting a recount of the parcels eligible to protest, and a recount of the protests themselves. If, as we suspect, the number of parcels needed to constitute a majority is fewer than the City originally claimed, and if a sufficient number of protests were timely submitted by a current owner of the property or a tenant customer of ACES, then the City must declare the protest successful and table the rate increase until such time as a more acceptable rate proposal finds favor with the property owners and ratepayers of the City of Sutter Creek.

Details of the City’s recounts is hereby requested under the California Public Records Act. If the City refuses to conduct a recount, a written response explaining the City’s position would assist HJTA in deciding how it should proceed. If you have any questions, I can be reached by calling (916) 444-9950. Thank you for your anticipated cooperation.

Sincerely,



Timothy A. Bittle

Director of Legal Affairs