SNELL
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SENT VIA US MAIL AND EMAIL
City Clerk
City of Bakersfield
1600 Truxtun Avenue
Bakersfield, California 93301
city_clerk@bakersfieldcity.us

Re: Government Claim of Service Employees International Union, Local 521 Against the City of Bakersfield Regarding Unlawful Sewer User Rates for Fiscal Years 2026-27 Through 2030-31

Dear City Clerk for the City of Bakersfield:

Service Employees International Union, Local 521 ("**SEIU 521**" or "**Claimant**"), by and through its attorneys, Snell & Wilmer L.L.P., hereby presents the following government claim to the City of Bakersfield ("**City**"). SEIU 521's government claim arises from the City Council's adoption on May 27, 2026, of a resolution increasing sewer user rates for Fiscal Years 2026-27 through 2030-31 (the "**Resolution**"). SEIU 521 brings this claim on behalf of its more than 3,000 members who reside in the City of Bakersfield and are subject to the unlawful sewer service charges imposed by the Resolution.

SEIU 521 also wishes to make clear at the outset that it supports the City's efforts to invest in critical sewer infrastructure, including necessary upgrades and renovations to the existing system. These improvements are important to the health, safety, and quality of life of Bakersfield residents and workers alike. However, these projects must be paid for fairly, by the correct ratepayers, funded in the right way, and phased over the appropriate period of time to minimize disruption to the public. Credible alternatives to the current rate structure exist, and SEIU 521 believes those alternatives must be explored and pursued before imposing exorbitant, constitutionally impermissible charges on existing ratepayers.

I. Precautionary Nature of Claim

SEIU 521 presents this government claim pursuant to Government Code section 910 et seq. solely as a precautionary measure to preserve its rights. SEIU 521 does not waive any argument that its claims may be exempt from, or not subject to, the claims presentation requirements of the Government Claims Act, including but not limited to any argument that a refund claim under Health and Safety Code section 5472 is exempt from the Government Claims Act (Gov. Code, § 905(a)), or that its claims are otherwise exempt as a challenge to the validity of a legislative enactment. SEIU 521 reserves the right to supplement or amend this claim following the City's response or expiration of the 45-day period under Government Code section 912.4.

II. Claimant Information

1. Name of Claimant:
Claimant is Service Employees International Union, Local 521, a labor organization representing public-sector employees in California's Central Valley and Central Coast regions.

2. Address of Claimant:
1001 17th Street
Bakersfield, California 93301

3. Address for Notices:
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III. Date, Place, and Circumstances of the Claim

On May 27, 2026, the City of Bakersfield City Council adopted a resolution to increase sewer user rates for Fiscal Years 2026-27 through 2030-31, following a cost-of-service analysis conducted by HF&H Consultants, LLC, and certain Proposition 218 proceedings.

The City mailed Proposition 218 Notices on March 5, 2026, and March 19, 2026, and held public hearings on April 22, 2026, and May 13, 2026.

The Resolution increases the annual sewer service charge from $247 per year per single-family home to $475 in FY 2026-27, escalating by $100 each fiscal year to $875 per year by FY 2030-31, representing an extraordinary 254% overall increase over a five-year span, as follows:

- FY 2025-26 (existing): $247 per year
- FY 2026-27: $475 per year
- FY 2027-28: $575 per year
- FY 2028-29: $675 per year
- FY 2029-30: $775 per year
- FY 2030-31: $875 per year

The Resolution also increases sewer service charges for multiple dwelling, commercial, and industrial customer classes. The vast majority of SEIU 521's more than 3,000 members who reside in the City of Bakersfield own or occupy single-family residential or multiple dwelling parcels subject to the challenged residential rates.

The unlawful conduct is ongoing and continuous. Each billing cycle in which the City imposes and collects sewer charges under the Resolution constitutes a separate and continuing violation.

IV. Legal Basis for Claim

A. Standing

1. Associational Standing

SEIU 521 brings this claim on behalf of its more than 3,000 members who reside in the City of Bakersfield and are subject to the sewer user rates imposed by the Resolution. SEIU 521 has associational standing because: (1) its members would have standing to bring this claim in their own right as property owners and ratepayers directly subject to the challenged sewer rates; (2) the interests SEIU 521 seeks to protect - preventing the imposition of unlawful and disproportionate sewer charges on its members - are germane to the organization's purpose of advocating for the economic welfare of its members; and (3) neither the claims asserted nor the relief requested requires the individual participation of SEIU 521's members, as this claim challenges the validity of the Resolution as a whole and seeks relief that would benefit all affected ratepayers uniformly.

2. Public Interest Standing

SEIU 521 also brings this claim on behalf of the public's interests. Government Code section 53759 and Code of Civil Procedure section 860 *et seq*. authorize "any interested person" to seek judicial determination of the validity of a resolution adopting sewer fees. SEIU 521 is an interested person because its members are directly and adversely affected by the challenged rates, and because this action enforces important rights affecting the public interest.

B. Proposition 218 and Article XIII D, Section 6(b)

In November 1996, California voters passed Proposition 218, adding articles XIII C and XIII D to the California Constitution. Article XIII D, section 6(b) prohibits local agencies from imposing property-related fees and charges unless:

1) Revenues derived from the fee or charge do not exceed the funds required to provide the property-related service (Cal. Const., art. XIII D, § 6(b)(1));

2) Revenues are not used for any purpose other than that for which the fee or charge was imposed (Cal. Const., art. XIII D, § 6(b)(2));
3) The amount of the fee imposed upon any parcel does not exceed the proportional cost of the service attributable to that parcel (Cal. Const., art. XIII D, § 6(b)(3));
4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question; fees or charges based on potential or future use of a service are not permitted (Cal. Const., art. XIII D, § 6(b)(4)); and
5) No fee or charge may be imposed for general governmental services, including but not limited to police, fire, ambulance, or library services, where the service is available to the public at large in substantially the same manner as it is to property owners (Cal. Const., art. XIII D, § 6(b)(5)).

The burden is on the City to demonstrate compliance with article XIII D. (Cal. Const., art. XIII D, § 6(b).)

C. Disproportionate and Unlawful Allocation of Growth-Related Capital Costs to Existing Ratepayers

The City's cost-of-service analysis and resulting rate structure violates Article XIII D, § 6(b)(3) because approximately 40% or more of the capital improvements funded by the rate increase are for expansion of system capacity to serve future users, not for renovation or maintenance of infrastructure serving current ratepayers. The City's own 2026-2030 Sewer Rates and Fees Report identifies over $400 million in capital costs for the expansion of Wastewater Treatment Plant ("**WWTP**") 3 from 32 MGD to 40 MGD, and new stormwater conveyance infrastructure, necessitated by anticipated growth in southwest Bakersfield and expanded industrial discharge from California Dairies, Inc.

WWTP 3 currently operates well below its existing 32 MGD capacity. The expansion is required solely to accommodate the projected sewer load from new residential developments and industrial growth that have not yet connected to the system. By charging current ratepayers for the cost of providing capacity to future users through a "pay-as-you-go" funding model, the City imposes on current parcels fees that exceed the proportional cost of sewer service attributable to those parcels, in violation of Article XIII D, § 6(b)(3).

Moreover, Article XIII D, § 6(b)(4) prohibits the imposition of fees or charges "based on potential or future use of a service" and requires that the service be "actually used by, or immediately available to, the owner of the property in question." The expansion costs represent infrastructure for future use by parcels that have not yet been developed or connected. The expanded capacity at WWTP 3 is not "immediately available" to current ratepayers in any meaningful sense; rather, it is capacity being constructed to serve future connections. Current ratepayers derive no benefit from paying for capacity that exists solely to accommodate growth that has not yet occurred. To the extent the City is passing through costs for a system expansion that is not immediately available to current users, the rates violate § 6(b)(4) as well as § 6(b)(3).

The appropriate mechanism for recovering growth-related costs is through connection fees and impact fees under the Mitigation Fee Act (Gov. Code, §§ 66013-66022), not through sewer service charges imposed on existing ratepayers under Proposition 218.

D. Pay-As-You-Go Funding Creates Impermissible Temporal Cross-Subsidy

The City elected to "cash fund" virtually all future capital infrastructure rather than using bonded indebtedness repaid by future ratepayers who will benefit from the new capacity. This pay-as-you-go approach forces current ratepayers to pre-fund infrastructure that will primarily benefit future users, creating a temporal cross-subsidy that violates the proportionality requirement of Article XIII D, § 6(b)(3). The magnitude of the cross-subsidy is reflected in the extraordinary 254% rate increase over 5 years imposed on existing ratepayers.

This funding approach also implicates Article XIII D, § 6(b)(4)'s requirement that the service funded by the fee be "immediately available" to the property owner paying the charge. Infrastructure that will not be constructed or operational for many years is not "immediately available" to current ratepayers, yet the City is collecting fees now to fund that future construction. This temporal disconnect between payment and service availability further demonstrates the constitutional infirmity of the rate structure.

Bonded indebtedness and connection/impact fees are available mechanisms that would appropriately allocate growth costs to future beneficiaries. The City's refusal to use these mechanisms results in a rate structure that is disproportionate and unlawful as applied to current ratepayers.

E. Improper Inclusion of Stormwater Costs in Sewer Rates

The City impermissibly included stormwater costs in the sewer user rates. The City does not operate a combined sewer and stormwater system. The City's stormwater system is separately regulated as a Municipal Separate Storm Sewer System ("**MS4**") under a National Pollutant Discharge Elimination System ("**NPDES**") permit (General Order No. R5-2016-0040-017, NPDES Permit No. CAS0085324), confirming the two systems are physically and operationally distinct. The City's wastewater treatment plants are separately regulated by Waste Discharge Requirements (WWTP No. 2, Order No. R5-2009-0122; WWTP No. 3, Order No. R5-2009-0087). Furthermore, Bakersfield Municipal Code section 14.12.220(B)(5) expressly prohibits discharge of stormwater into sanitary sewers.

Because the cost-of-service analysis does not segregate stormwater costs from sewer costs, the Resolution violates Article XIII D, § 6(b) in three respects: (1) revenues exceed the funds required for property-related sewer service; (2) revenues fund purposes other than sewer service; and (3) the fee exceeds the proportional cost of sewer service attributable to each parcel.

Additionally, the stormwater component of the rates violates Article XIII D, § 6(c) because it has not been submitted to a vote of affected property owners, as required for charges that are not sewer, water, or refuse collection charges. (*See Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351; *Gluck v. City and County of San Francisco* (2025) 111 Cal.App.5th 769, 787.)

F. Non-Proportional Rate Structure Independent of Stormwater and Growth Issues

SEIU 521 suspects the City's rate structure independently violates Article XIII D, § 6(b)(3) because the rates do not reflect the proportional cost of sewer service attributable to each parcel, even if stormwater and growth-related costs are excluded. The cost-of-service analysis utilized a composite CIP allocation methodology that blends ten years of anticipated capital costs, the majority of which serve a geographically concentrated sector of future growth, into a single rate applied to all current ratepayers across the City, thereby obscuring the actual cost of service to existing parcels. SEIU 521 reserves the right to supplement this allegation following completion of an expert cost-of-service analysis.

V. Injury, Damage, and Amount Claimed

SEIU 521, its members, and the public at large are injured by the City's imposition of unlawful sewer charges. Any payments of unlawful rates made by SEIU 521 members or the public at large should be considered payments under protest as contemplated by Health & Safety Code 5470 *et seq*. Thus, SEIU 521, its members, and the public are entitled to:

1) Pursuant to Health & Safety Code 5470 *et seq*., a refund of all sewer fees collected by the City in excess of the lawfully assessable amount, including amounts attributable to (a) disproportionate growth-related capital costs improperly charged to existing ratepayers, (b) improperly included stormwater costs, and (c) any overcharges arising from a non-proportional rate structure, with interest at the legal rate from the date of collection;
2) Injunctive and mandamus relief to prevent the continued collection of unlawful rates and to compel the City to adopt a rate structure that complies with Article XIII D, § 6(b); and
3) Such other damages and relief as may be proven at trial.

The amount of overcharge cannot be determined without a compliant cost-of-service analysis that (a) segregates stormwater costs from sewer costs, (b) excludes growth-related expansion costs that should be funded through connection fees and impact fees, and (c) demonstrates proportional allocation of remaining costs to each parcel based on the actual cost of sewer service attributable to that parcel. The amount of damages may be proven at trial. SEIU

521 reserves the right to supplement this claim following completion of an expert cost-of-service analysis.

VI. Reservation of Rights

SEIU 521 fully reserves all rights and remedies under both statutory and common law, including those arising under Article XIII D of the California Constitution, Health and Safety Code section 5472, Government Code section 53759, Code of Civil Procedure sections 860 et seq. and all other appliable provisions. SEIU 521 reserves the right to amend or supplement this claim following the City's response or expiration of the 45-day period under Government Code section 912.4.

SEIU 521 does not waive its position that the Government Claims Act does not apply to this action by presenting this claim. SEIU 521 further reserves the right to intervene in any pending or future litigation challenging the Resolution, including *County of Kern v. City of Bakersfield*, Kern County Superior Court Case No. 26 CUB02363 ("**County Lawsuit**"), and to file independent litigation to vindicate the rights of its members.

In presenting this claim, SEIU 521 reiterates that it supports responsible investment in Bakersfield's sewer infrastructure. The upgrades and improvements contemplated by the City are important and necessary. But these projects must be funded by the appropriate ratepayers, through the appropriate mechanisms and procedures, and over the appropriate timeframe. The current rate structure fails on all three counts. Credible alternatives exist that would allow the City to make needed investments without imposing unconstitutional charges on existing ratepayers, and SEIU 521 urges the City to explore and pursue those alternatives.

VII. Request for Meeting

SEIU 521 requests a meeting with City leadership to discuss the issues raised in this claim and to explore a mutually acceptable solution. Given the clear constitutional issues in the City's current rate structure raised by this letter and the County Lawsuit, SEIU 521 is confident that, upon further review, the City will recognize the need to revisit and revise its plan. The City and SEIU 521 share a common interest in conserving valuable public and organizational resources; rather than expend substantial public funds defending rates that are likely to be found unlawful, the City and SEIU 521 should work collaboratively toward a fair, proportional, and legally compliant rate structure that serves the long-term interests of Bakersfield's ratepayers and the broader community.

SEIU 521 therefore respectfully requests that the City meet and confer with SEIU 521 and its counsel within the next twenty (20) days to discuss the concerns raised herein and to determine whether a more equitable path forward can be reached without the need for litigation.

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The undersigned, on behalf of Service Employees International Union, Local 521, states that he or she is authorized to present this claim on behalf of SEIU 521.

By: ___________________________________

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