

Local Government Fees: Prop. 26 & Other Topics



**CALIFORNIA
MUNICIPAL RATES
GROUP**

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Groundwater Extraction Charges



- *Pajaro Valley Water Mgmt. Agency v. AmRhein* (6th DCA 2007)
 - Groundwater augmentation / extraction charges are property related fees subject to Prop. 218

Groundwater Extraction Charges



- *Griffith v. Pajaro Water Mgmt. Agency* (2013) 220 CA4th 586 (6th DCA)
 - Charge is a fee for “water service” exempt from 13D, 6(c) election requirement
 - Omnibus Act’s definitions are good authority notwithstanding *HJTA v. Salinas*
 - Notice of protest hearing can be given to property owners alone

Groundwater Extraction Charges



- ***Griffith*** (continued)
 - Debt service, GA&O, service planning all permissible uses of fee
 - AWWA M-1 Manual's cost-accounting process complies w/ Prop. 218
 - Parcel-by-parcel cost analysis is not required; class-by-class is okay provided the classes are rationally drawn

Groundwater Extraction Charges



- *Cerritos, Downey & Signal Hill v. Water Replenishment District of So. Cal.* LA Superior Court Case No. BS128136
 - Trial court invalidated WRD's charges for non-compliance w/ 218 in 2011; appeal likely when remedies resolved
- *Ventura v. United Water Conservation Dist.*, 2nd DCA No. B251810
 - Trial court found Prop. 218 violation and awarded \$1.3m refund, appeal and cross-appeal filed; briefing underway

Groundwater Extraction Charges



- *Great Oaks Water Company v. Santa Clara Valley Water District*, 6th DCA Case Nos. H035885, H035260
 - Revisits *AmRhein v. Pajaro* and application of 218
 - Did SCVWD comply w/ 218?
 - Fully briefed 12/8/11

Groundwater Extraction Charges



- *Water Replenishment District of So. Cal. v. Cerritos* (2013) 220 CA4th 1450 (2nd DCA)
 - “Pay first, litigate later” rule applies to local government
 - Remedy for illegal revenue measure is not full refund, but refund of difference between lawful charge and what was paid
- AB 2189 (Garcia, D-Bell Gardens)
 - Amends WRD’s principal act to require 218 compliance with notices to pumpers not all parcel owners
 - Referred to Local Government Committee 3/6/14

Water Fees



- *City of Palmdale v. Palmdale Water District* (2011)
198 CA4th 926 (2nd DCA)
 - City challenged conservation water rates, claiming Prop. 218 disallows them
 - DCA found 218 and Constitutional provision against wasting water could be harmonized, but struck down PWD rates as insufficiently justified
 - Caution required when constructing conservation rates

Water Fees



- *Brooktrails Township CSD v. Board of Supervisors* (2013) 218 CA4th 195 (1st DCA)
 - Initiative requiring District to end policy of charging inactive accounts minimum monthly service charge was not a tax on other water customers requiring 2/3 voter approval
 - Later phase of fight in *Paland v. Brooktrails CSD* which found the policy not to violate Prop. 218
 - Prop. 26 not retroactive as to local governments

Stormwater Fees

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- **AB 2403 (Rendon, D-So. Gate)**
 - Amends definition of “water” in 218 Omnibus Act to include storm water recapture programs
 - Codifies *Griffith v. Pajaro*
 - HJTA has agreed to go neutral

Prop. 218 & Water Rates



- *Morgan v. Imperial Irr. Dist.* (2014) 223 Cal.App.4th 892
 - Farmers not entitled to separate rate protest
 - Deferential substantial evidence review of trial court rulings
 - Allowed secrecy of protests
 - Rates can be less than cost
 - Reh'g denied, Pet'n for review pending

Initiatives & Water Rates



Mission Springs Water District v. Verjil (2013) 218 CA4th 82

- Initiative to reduce water rates, bar increases for a year & limit future increases
 - Registrar certified petition & District filed decl. relief action to prevent election; trial court denied HJTA's demurrer & anti-SLAPP motion
 - SLAPP and decl. relief both OK
 - Initiative invalid b/c set rates too low

Initiatives & Water Rates



- *Vagim et al. v. City of Fresno*, Fifth DCA Case No. F068569
 - City sought declaration relying on *Mission Springs*
 - Initiative Proponents sought writ to compel title & summary
 - Trial court granted writ ordered City to provide title & summary for rate repeal initiative
 - 5th DCA dismissed appeal as moot
 - Petition for review pending
 - City's declaratory relief action set for trial 5/28/14

Sewer Fees & Equal Protection



- *Armour v. City of Indianapolis* (2012) 132 S. Ct. 2073
 - City mandated sewer connections and allowed owners to pay up front or over 30 years
 - Then cancelled program w/o refund to those who paid up front
 - USSC found rational basis in administrative need to terminate all districts without tail liability; Scalia forceful dissent

Sewer Fees



- **AB 2567 (Carter, D-Rialto)**
 - Amended GC 53756 to add “wastewater” and “wastewater treatment” effective 1/1/13
 - Allows rates under Prop. 218 to include inflation-adjustment mechanisms until sooner of:
 - ✦ 5 years
 - ✦ Increase beyond the inflation-adjusted rate

Solid Waste Fees



Torres v. Arakelian Enterprises, 2nd DCA Case No. B246515

- Trial court invalidated award of exclusive franchise for failure to comply with Prop. 218 in rate-setting
 - Residential fee collected by City
 - Respondent's brief due 4/10/14

Solid Waste Fees



- *Chung v. City of Monterey Park* (2012) 210 CA4th 394
 - Ballot measure placed on ballot by City Council w/o initiative petition to require competitive procurement of trash franchises not subject to CEQA
 - Helpful discussion of CEQA exemption for government actions which raise money

Development Impact Fees



- *Cresta Bella, LP v. Poway USD* (2013) 218 Cal.App.4th 438
 - School impact fees may not be collected on gross area of new construction, but must net out prior construction on site demolished for the project

Development Impact Fees



CBIA v. City of San Jose

Cal. S. Ct. Case No. S212072

- DCA held inclusionary housing fees benefit from rebuttable presumption they are reasonably related to City housing objectives
- Developer bears burden to provide otherwise
- Principal briefing completed 2/20/14, amicus briefing underway as of 4/8/14

Public Records Act Fees



- *Sierra Club v. Superior Court (County of Orange)*
(2013) 57 C.4th 157
 - County could not impose fee for use of its GIS system because products of that system constitute public records subject to disclosure at cost under Public Records Act

Property Related Fees



- **SB 553 (Yee, D-SF)**
 - Fee elections (such as flood control fees) require 2/3-voter or majority property owner approval
 - Sets standards for property owner elections similar to those for assessments
 - ✦ “OFFICIAL BALLOT ENCLOSED” on envelope
 - ✦ Tabulation in public
 - ✦ Ballots secret till tallied
 - Effective 7/1/14

PILOTs on Affordable Housing



- Some Assessors concluded City PILOT agreement w/ affordable housing developer voided welfare exemption from property tax
- SBE concluded otherwise in 12/13 opinion
- AB 1760 (Chau, D-Monterey Park) would prohibit PILOTs prospectively, SB 1203 (Jackson, D-Sta. Barbara) would void existing agreements, to be heard 4/23/14

Prop. 26



Griffith v. City of Santa Cruz (2012) 207 CA4th 982

- Challenge to fee on landlords for housing code enforcement
 - No violation of equal protection, 218 or 13
 - Helpful discussion of burden of proof under 26
 - Practical application of licensing exception
 - Applies pre-26 regulatory fee case law

Prop. 26 Litigation



- *Citizens for Fair REU Rates v. City of Redding* (3d DCA Case No. Co71906)
 - Challenge to electric utility PILOT
 - City won on ground that 26 not retroactive
 - Appeal fully briefed as of 8/13
- *Bauer v. Harris* (E.D. CA No. 11 CV 01440)
 - Challenge to gun registration fees under 2nd Amendment and Prop. 26
 - To be tried 3/24/15

Prop. 26 Litigation (cont.)



- *Schmeer v. County of Los Angeles* (2013) 213 CA4th 1310
 - Challenge to provision of plastic bag ban requiring retailers to charge \$0.10 for paper bags
 - Trial court concluded this was not a government fee subject to Prop. 26
 - Prop. 26 does not apply to fees not paid to govt.

Obamacare is not a Tax



- *National Federation of Independent Business v. Sebelius* (2012) 132 S. Ct. 2566, 2594:
 - “the essential feature of any tax ... produces at least some revenue for the government.”
 - Will be useful in disputes like *Schmeer*.

Prop. 26 Litigation (cont.)



- ***Cal. Chamber of Commerce v. CARB*, 3rd DCA Case No. C075930**
 - Challenges AB 32 implementation under Prop. 13
 - Trial court ruled for State
 - Appeal waiting preparation of record
- ***Morning Star Packing Co. v. CARB*, 3rd DCA Case No. C075954**
 - Related to the Chamber case
 - Same result
 - Also awaiting record on appeal

Prop. 26 & State Fire Fee



- State imposed \$150 / structure fee on State Responsibility Areas
- HJTA challenged under Prop. 26 b/c not approved by 2/3 of each house
- *HJTA v. CDF*, Sacto Superior Case No. 34-2012-00133197
- State answered third amended complaint 2/28/14

Prop. 26 Legislation



- **AB 483 (Ting, D-SF)**
 - Proposed by CA Travel Association to help defend tourism marketing district (TMD) assessments; also helpful for non-property BIDs
 - Incidental benefits to non-payors does not disqualify assessment under Prop. 26 provided they do not cost payors more
 - Effective 1/1/14, adds GC 53758

Audits



- **AB 941 (Rendon, D-So. Gate)**
 - Independent JPAs must report audits to Controller
 - Controller may audit local governments if finds not complying w/ financial requirements of law, grants, local charter or ordinance
 - If misconduct found, local government pays for audit
 - Died in Assembly Appropriations 1/31/14

Audits



- **AB 1035 (Muratsuchi, D-Torrance)**
 - Doubles fines for audit late for 2 years in a row, triples if late for 3 years
 - Controller may conduct audit at local expense after 3 years' delay
 - Hearing before Senate Government & Finance cancelled in June 2013

Audits



- **AB 1345 (Lara, D-Bell Gardens) effective 1/1/13**
 - SAA audits due to SCO w/in 9 mos. of FY end
 - If late, SCO can hire auditor at local expense
 - SCO must report unprofessional conduct or multiple failures to comply w/ standards to Bd. of Accountancy
 - All audits by CPAs in good standing
 - 6-yr limit (post FY 12–13) on relationships w/ “lead audit partner, coordinating audit partner ... or audit partner responsible for reviewing the audit”

Internal Controls



- **AB 1248 (Cooley, D-Rancho Cordova)**
 - Adopts GC 12422.5 to require State Controller to adopt model internal control guidelines “to assist a local agency ... in establishing a system of internal controls to safeguard asset and prevent and detect financial errors and fraud”
 - Must post to web by 1/1/15
 - Not legally binding, but may be politically so

Financial Management Training



- AB 1235 (Gordon, D-Menlo Park)
 - AB 1234-style training requirement for local officials on financial management
 - ✦ Councilmembers, paid elected officials, staff designated by local policy
 - One training session per term of office and may be taken at home, in person or online
 - Providers must consult Treasurer & Controller
 - Vetoed

Fiscal Ballot Measures



- *Owens v. Co. of Los Angeles* (2013) 220 CA4th 107
 - Post-election challenges to ballot materials disfavored and must show voters misled
 - Identifying benefited services did not make a special tax
 - Not misleading to call this a continuation and reduction of tax even though failure of measure would have ended tax

Mandates



- *Dept. of Finance v. Comm'n on State Mandates, Cal. S. Ct. Case No. S214855*
 - LA Court of Appeal found that NPDES mandates are imposed under federal rather than state law, and thus were not reimbursable mandates
 - S. Ct. granted review, vacating that ruling
 - Opening brief due 5/1/14

Questions?

