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Newsletter | Winter 2020

## Update on Public Law What's Up with Prop. 13?

By Michael G. Colantuono

Proposition 13 is back in the news in a somewhat confusing way. A measure on the March 2020 ballot bears that number, but has nothing to do with property taxes. It authorizes \$15 billion in bonds for capital facilities for California school districts and universities. Two measures that do affect the 1978 ground-breaking constitutional amendment capping property taxes are in discussion, however.

The November 2020 ballot is now slated to include "The California Schools and Local Communities Funding Act of 2018," measure 17-055, to would impose a "split roll" valuing property for tax purposes differently as between commercial and other property. Proposed by a coalition of labor and social-justice groups, it would end Prop. 13's practice of assessing commercial property based on historic sales prices, adjusted for the lesser of inflation (or deflation) or 2 percent per year. Unlike natural persons, business entities can transfer title to property without a recorded sale (as by selling stock in a holding company) and, as a result, some business properties have escaped reappraisal for decades. This has distorted markets, with a news story reporting that two adjacent Beverly Hills hotels paid very different property tax bills.

However, perhaps because the measure polled badly, its framers are circulating an alternative. The changes suggest the political challenges the earlier initiative faced.

Measure No. 19-0008A1 achieved the 25-percent-signature threshold by December 14, 2019 and is still in circulation. It:

- Applies the local control funding formula to distribute school funding;
- Allocates city, county and non-school special district funding using AB 8 shares — which replicate the shares of property taxes agencies received in the 3 years before Proposition 13;

*(Continued on page 3)*

### WELCOME ANDREW JARED AND CHICO

CH&W is pleased to welcome the City of Chico to the ranks of its 10 general counsel cities. Chico City Attorney Andrew L. Jared joins us after 14 years as a City Attorney and Deputy City Attorney and brings a BS in Geology from UCLA, an MS in Environmental Management from the University of London, and a JD from Pepperdine. He teaches planning and environmental management at CSU Northridge.

Chico is the largest City in Butte County, made larger by the influx of those displaced by the Paradise fire. It is a full-service city providing police, fire, solid waste, wastewater and other services, including historic Bidwell Park, one of America's largest city parks at 3,670 acres. It is a charter city with a council-manager form of government and 7-member Council with a rotating mayor and vice mayor.

Andrew is based in our Pasadena office and will support our work for our Southern California clients, including the City of South Pasadena.

Welcome Andrew and Chico!

# Snuffing Vaping?

By *Nikhil S. Damle*

Electronic cigarettes (“e-cigarettes”) have become a hot button issue. They entered the marketplace around 2007 and are now the tobacco product youth most commonly use. These are battery-operated devices, often resembling cigarettes, using flavored tobacco to emit a nicotine-containing aerosol. They are frequently referred to as e-cigs, hookah pens, vapes and vape pens.

According to the Centers for Disease Control and Prevention, middle- and high-school students reporting use of tobacco products increased 36% between 2017 and 2018 from 3.6 million to 4.9 million students — driven largely by e-cigarette use.

**Federal Regulation.** Tobacco, smokeless tobacco and other tobacco products are subject to the Family Smoking Prevention and Tobacco Control Act (FSPTCA). In 2016, the FDA deemed e-cigarettes to be “tobacco products.” This allowed the FDA to regulate e-cigarettes just as traditional tobacco products are. In January 2020, the FDA issued guidance banning flavored e-cigarette products that appeal to children, including fruit and mint flavors.

**State Regulation.** California’s smoke-free laws govern e-cigarettes, which are prohibited in most workplaces and many public spaces, but allowed where smoking is. Governor Newsom signed an executive order directing the Department of Public Health to fund the development of recommendations for warning signs about the health risks of vaping, increased enforcement as to illegal sales, and establishing nicotine and packaging standards.

**Local Laws.** The FSPTCA allows local governments to adopt vaping regulations more stringent than federal law. California cities and counties have done so, banning e-cigarettes in many places. These vary in scope and approach. Beverly Hills has prohibited any sale of tobacco products in the city. Palo Alto limits sale of flavored tobacco to retailers that generate more than 60 percent of revenue from the tobacco

sales, do not sell food or alcohol for consumption on-site, and exclude those younger than 21.

Cities and counties considering regulating e-cigarettes may revise smoking ordinances or separately regulate e-cigarettes. The law in this area changes rapidly. As always, we’ll keep you posted!

For more information on this subject, contact *Nikhil* at [NDamle@chwlaw.us](mailto:NDamle@chwlaw.us) or (213) 542-5709.

## Webinars!

CH&W is offering webinars on (i) SB 1421 and AB 748, recent statutes granting greater public access to police personnel record, (ii) new laws governing zoning control of accessory dwelling units (ADUs), and (iii) new limits on utility fees for ADUs.

A webinar allows agency management and counsel advice and guidance and Q&A in an attorney-client-privileged setting.

The fee is \$1,000 per agency. To schedule a webinar, contact Bill Weech at [BWeech@chwlaw.us](mailto:BWeech@chwlaw.us) or (213) 542-5700.

# California Water Wars' Latest Chapter

By Conor W. Harkins

*City of Santa Maria v. Adam*, filed in 1997, recently completed its third trip to the Court of Appeal. It seeks to adjudicate groundwater rights in the Santa Maria Valley Groundwater Basin.

The trial court found disputed Twitchell Reservoir flows were “salvage water,” not groundwater. The Bureau of Reclamation holds a State Water Resources Control Board license to collect seasonal flow from the Cuyama River in that reservoir and works with the Santa Maria Water Conservation District to distribute water by recharging the basin. Though it distributes water via the basin, the water remains salvaged surface water, not groundwater. The public agencies also proved a right to “return flows” from imports they store in the basin.

Public water providers stipulated with some basin landowners to waive prescription claims. A prescriptive right is an entitlement to use someone else’s groundwater because one used it thinking it was her own and because the owner failed to act to protect his rights. The non-stipulating landowners would have to prove the public agencies had not prescribed against their rights.

The trial court also found the public agencies had prescribed against non-stipulating landowners. Those landowners appealed, seeking determination of the scope of their rights — if the public agencies prescribed rights to 7,000 acre-feet-per-year, how much groundwater do we have, they asked? The Basin is not in overdraft, so the Court concluded there was not yet need to make that determination.

Water law disputes are complex. The groundwater management required by the Sustainable Groundwater Management Act may provide opportunities to resolve such disputes by political negotiation. It might foment more water-rights litigation. Time will tell.

For more information on this subject, contact Conor at [CHarkins@chwlaw.us](mailto:CHarkins@chwlaw.us) or (530) 798-2416.

## Prop. 13 (cont.)

It remains to be seen whether significant demographic changes since 1978 will carry this measure to success or whether California remains more conservative as to government funding than might appear.

- Exempts residential and agricultural property;
- Exempts smaller commercial and industrial parcels (i.e., those worth \$3m or less);
- Allows reassessments to be phased in by statute (so as not to overwhelm County Assessors, who have not appraised market values in decades).

The measure seems likely to qualify. If so, the earlier measure will be withdrawn.

This will likely generate a political battle royale, with significant funding from business and real estate interests against the proposal and support from unions and progressive interests. The measure would generate billions of dollars in new funding for local governments and schools.

The measure would not change Proposition 13’s protections for agricultural, small business and residential properties — single-family or multifamily.

It remains to be seen whether the significant demographic and political changes since voters approved Proposition 13 in 1978 will carry this measure to success or whether California remains more conservative as to government funding than might appear from the Democratic sweep of statewide offices and Democratic super-majorities in the Legislature.

For more information on this subject, contact Michael at [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us) or (530) 432-7357.



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