

# **Municipal Water Ratemaking**

Urban Water Institute

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Palm Springs, CA



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# Interest on Tax & Fee Judgments

- AB 748 (Eggman, D-Stockton)
  - Lowers interest rate on judgments against local governments from 7% to T-bill rate pre-judgment and T-bill plus 2% post-judgment
  - Sought by local gov'ts for many years
  - Effective 1/1/14
  - *Clovis v. Fresno* (2014) 222 CA4th 1469 found no retroactivity

# Taxes

- *Jacks v. City of Santa Barbara* (2d DCA Case No. B253474, \_\_\_\_ CA4th \_\_\_\_ (Feb. 26, 2015))
  - Franchise fee on PG&E found to be a tax requiring voter approval
  - Was in addition to basic franchise fee and PG&E only liable to pay it if PUC allowed it to charge it to customers
  - Petition for review may be likely

# Groundwater Extraction Charges

- *Pajaro Valley Water Mgmt. Agency v. AmRhein* (2007) 150 CA4th 1364
  - 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
  - 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



# Stormwater Recapture

- AB 2403 (Rendon, D-So. Gate)
  - Codifies *Griffith v. Pajaro*
  - Amends GC 53750(m) to add “from any source” to definition of “water” in Prop. 218 Omnibus Implementation Act
  - Chaptered 6/28/14, effective 1/1/15

# Stormwater Planning

- SB 985 (Pavley, D-Agoura Hills)
  - Standards for voluntary storm water capture planning
  - Repeals requirement of consistency with IWRMP
  - Required for bond funding under 2014's Prop. 1
  - SWRCB to develop guidelines by 7/1/16

# 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
  - Does Prop. 218 apply to groundwater rates?
  - Who is entitled to notice of Prop. 218 hearing: groundwater pumpers subject to charge or all property owners in Central and West Basins?
  - Are WRD's costs proper?

# Groundwater Extraction Charges

- *Ventura v. United Water Conservation Dist.*, 2<sup>nd</sup> DCA No. B251810
  - Trial court found Prop. 218 violation in statutory 3:1 ratio of ag. to M&I rates and awarded \$1.3m refund
  - Appeal argues Prop. 26, not 218 applies, and that deferential judicial review should save the 3:1 ratio
  - Cross-appeal argues that costs should be allocated basin-by-basin and that many of UWCD's costs should not be recovered from augmentation charges
  - Argued 6/18/14, resubmitted 12/8/14, decision due ~3/8/15

# Groundwater Extraction Charges

- *Great Oaks Water Company v. Santa Clara Valley Water District*, 6<sup>th</sup> DCA Case Nos. H035885, H035260
  - Revisits *AmRhein v. Pajaro* and application of 218
  - Did SCVWD comply w/ 218?
  - Argued 2/18/15, decision due ~5/19/15
  - Court may be likely to reverse but maintain app'n of Prop. 218 to groundwater charges

# Groundwater Extraction Charges

- *Water Replenishment District of So. Cal. v. Cerritos* (2013) 220 CA4th 1450 (2<sup>nd</sup> DCA)
  - “Pay first, litigate later” rule applies to local government
  - Dicta suggests remedy for illegal revenue measure is not full refund, but refund of difference between lawful charge and what was paid

# Groundwater Extraction Charges

- AB 2259 (Ridley-Thomas, D-LA)
  - Amends Water Code § 60317 to shorten statute of limitations to challenge WRD assessments and to seek refunds to 180 days
  - Effective 1/1/15

# Groundwater Sustainability Agencies' Rate-Making Authority

- Service fees pre-GSA designation and by multiple-agenda GSA's members pre-plan adoption (WC 10730.2)
- Regulatory Fees pursuant to plan, including meter fees and fees on public agencies that pump (WC 10730, 10726.8(d))
- SWRCB fees (WC 1529.5)
- Fines & Penalties – GSA and SWRCB



# GSA Fees

- Fees on groundwater production will be subject to Prop. 218
  - Statute says so
  - *Pajaro* says so
- All other fees subject to Prop. 26

# Water Fees

- *City of Palmdale v. Palmdale Water District* (2011) 198 CA4th 926
  - City challenged conservation water rates, claiming Prop. 218 disallows them
  - DCA found 218 and Article X, § 2 can 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
  - 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

# Prop. 218 & Water Rates

- *Morgan v. Imperial Irr. Dist.* (2014) 223 Cal.App.4<sup>th</sup> 892
  - Farmers not entitled to separate rate protest
  - Applied deferential substantial evidence review and independent judgment review to trial rulings
  - Allowed secrecy of protests
  - Rates can be less than cost

# Prop. 218 & Water Rates

- *Capistrano Taxpayers Assn v. City of San Juan Capistrano*, 4<sup>th</sup> DCA Case No. G048969
  - Required support for tiered water rates
  - Use of water rates to fund new recycled water system not yet in service
  - Argued 1/21/15, decision due ~4/21/15
  - Argument suggests Court will conclude SJC's record inadequate to support its tiers

# Prop. 218 and Water Rates

- Issues in *CTA v. San Juan Capistrano*
  - Does Prop. 218 allow tiered water rates?
  - How tightly must they be tied to costs of particular water sources?
  - Can a new water supply be charged to all or only those who will take that supply?
  - Can tiered rates be justified as fines?
  - As for supplemental water beyond that governed by Prop. 218?

# More Challenges to Tiered Rates

- *Glendale Coalition for Better Government v. City of Glendale*, LASC No. BS153253
- *Sweetwater Authority Ratepayers Association, Inc. v. Sweetwater Authority*, San Diego S. Ct. No. 37-2014-00029622

# 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*, Fresno Superior Court Case No. CECG03206
  - City sought declaration relying on *Mission Springs*
  - Trial court granted writ ordering City to provide title & summary for rate repeal initiative
  - 5<sup>th</sup> DCA dismissed City's appeal as moot
  - Related declaratory relief case dismissed
  - City settled

# Initiatives & Water Rates

- *Dixon v. Solano County Taxpayers Ass'n*, Solano Co. Sup. Ct. Case No. FCS044917, filed 2/17/2015
  - City seeking writ to prevent election on measure to reduce sewer rates below level necessary to construct facilities required to end fines imposed by RWQCB

# 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* (2015) 233 CA4th 402
  - Challenge to electric utility PILOT
  - City won at trial b/c 26 not retroactive
  - DCA found PILOT expired w/ each budget
  - City petitioned for review to test:
    - Retroactivity
    - Cost of Service
    - Meaning of “imposed”
    - Prop. 62 remedy

# Prop. 26 Litigation

- *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.

# Prop. 26 Litigation (cont.)

- *Cal. Chamber of Commerce v. CARB*, 3<sup>rd</sup> DCA Case No. C075930
  - Challenges AB 32 implementation under Prop. 13
  - Court ruled for State; Resp. Briefs due 3/5/15
- *Morning Star Packing Co. v. CARB*, 3<sup>rd</sup> DCA Case No. C075954
  - Related to the Chamber case; same result & status, appeals consolidated

# 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; in discovery as of March 2015



# 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-payers do not disqualify assessment under Prop. 26 provided they do not cost payors more
  - Effective 1/1/14, adds GC 53758

# Questions?

