APPLICATION OF PROPOSITION 218 TO GROUNDWATER PUMPING CHARGES

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NEW CASE LAW

On December 4, 2017, the California Supreme Court published its decision in ***City of San Buenaventura v. United Water Conservation District*** holding:

- Groundwater pumping charges **are not** considered a property-related fee or charge subject to the requirements of Proposition 218.
- They **are** considered a "nontax fee" under Proposition 26.

WHAT ARE PROPS. 218 & 26?

Part of a series of voter initiatives that amended the California Constitution to place limitations on the authority of state and local governments to collect revenue.

- Proposition 13 (1978)
  - Requires 2/3 voter approval for "special taxes" and limited property tax to 1% of assessed valuation.
  - Did not restrict ability to impose special assessments, i.e. charges levied on owners of real property directly benefited by a local improvement to defray costs.
- Proposition 218 (1996)
  - Imposed substantive and procedural restrictions on taxes, assessments, fees and charges "assessed by any agency upon any parcel of property or upon any person as an incident of property ownership."
- Proposition 26 (2010)
  - Makes all local government revenue "taxes" requiring voter approval unless one of 7 exceptions applies.

FACTS OF THE CASE

United Water Conservation District

- Manages groundwater resources in Ventura County including conservation activities such as replenishing groundwater stores and preventing degradation of the water supply.
- Collects a fee from groundwater pumpers based on the volume of water pumped.
- Pursuant to statute, nonagricultural users are charged 3x more than agricultural users.

City of Ventura

- Pumps groundwater for export to residential users.

CITY OF VENTURA'S CLAIM

The City of Ventura claimed that the District's rate structure violates Prop. 218:

- The charges exceed the proportional cost of service attributable to the service the City demands.
- The statutory 3:1 ratio constitutes an illegal subsidy for agricultural users at the expense of all other users.

Alternatively, the City claimed the District's rate structure violates Prop. 26:

- The charges do not meet any of the Prop. 26 exemptions and should be considered unapproved taxes imposed in violation of the Constitution.

TRIAL COURT DECISION

Relying on *Pajaro Valley Water Management Agency v. Amhrein*, ruled that:

- Pumping charges are "imposed on persons as an incident of property ownership" and subject to the requirements and restrictions of Prop. 218.
  - *Amhrein* decision based on Supreme Court decision in *Bighorn-Desert View Water Agency v. Verjil*, holding that delivered water charges are subject to Prop 218 as property-related fees or charges.

COURT OF APPEAL & SUPREME COURT DECISIONS

Reversed Trial Court decision:

- Not property-related charges or fees within the meaning of Prop. 218:
  - Fees not charged as an incident of property ownership because the service provided does not have a direct relationship to property ownership.
  - City not charged as a landowner but as a groundwater user.

QUOTE FROM SUPREME COURT

"[W]hile Bighorn *holds that fees for supplying water through an established connection are property-related service fees, charges for the service the District provides—that is, the conservation of limited groundwater stores and remediation of the adverse effects of groundwater extraction—are not property-related in the same way: The District does not deliver water via groundwater to any particular parcel or set of parcels. . . . The District instead conserves and replenishes groundwater that flows through an interconnected series of underground basins, none of which corresponds with parcel boundaries. These basins are managed by the District for the benefit of the owners of land on which wells are located."*

SUPREME COURT'S DECISION (CONT.)

Prop. 26 provides the proper framework for evaluating constitutionality of the District's groundwater pumping charges:

- Exemption applies, making the charges a nontax fee:
  - Charges for a "specific benefit conferred or privilege granted," or "a specific government service or product" that is provided "directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government."
  - The amount of the charge may be:
    1. "No more than necessary to cover the reasonable costs of the governmental activity," and
    2. "The manner in which those costs are allocated to a payor" must "bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

SUPREME COURT'S DECISION (CONT.)

Case remanded to Court of Appeal to analyze whether District meets second part of test:

- Satisfied first part finding the charges in the aggregate did not exceed the District's costs of providing groundwater management services.
- Did not did not address whether the charges bear a fair or reasonable relationship to the payor's burdens on or benefits from the District's conservation activities, including statutory 3:1 ratio.

SUPREME COURT GUIDANCE ON PROP. 26

Because case remanded to Court of Appeal…

- Little guidance from the Supreme Court on how to apply the "fair and reasonable relationship" standard, meaning more litigation in the future.

Court suggests Proposition 26's "fair and reasonable relationship" test gives flexibility to rate-makers, citing *Brydon v. East Bay Municipal Utility District*:

- Proposition 13 case that upheld incline block water rates that impose progressively higher rates for greater use of water to encourage conservation.
- *"In pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity."*

DECISION APPLIED TO PV WATER

The Court disapproved ***Pajaro Valley Water Management Agency v. Amhrein*** and ***Griffith v. Pajaro Valley Water Management Agency*** insofar as they are inconsistent with this decision.

- Substantive and procedural requirements of Proposition 218 no longer apply to augmentation charges, including:
  - Charges do not "exceed the proportional cost" of the service that is "attributable to the parcel" on which the charge is imposed.
  - Majority protest hearing, with 45-day notice period.
- New or increased augmentation charges will be subject to the requirements of Prop. 26 and the Agency Act.
  - Charges do not exceed the costs of the Agency's groundwater management services.
  - Charges bear a fair or reasonable relationship to the payor's burdens on or benefits from the Agency's activities.
- Delivered water charges are still subject to Proposition 218.

QUESTIONS?