

League of California Cities ❖ Annual Conference  
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# City Finance: Law and Elections Update

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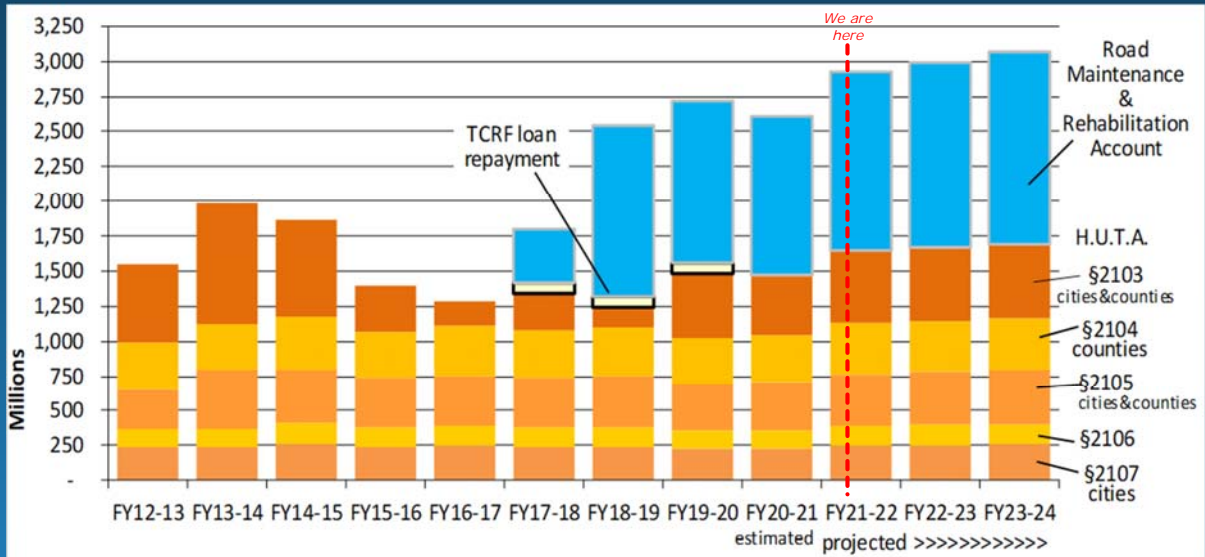
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*The California Local Government Finance Almanac*



# Local Streets and Roads \$ to Cities and Counties



Source: Actual distributions by State Controller, projections by California Department of Finance.

# Local Streets and Roads Revenues



**Local \$ to HUTA**

Str&Hwy2103  
Previously price-based  
**Gasoline Excise Tax**  
reset to @17.3¢ on 7/1/19

Now 18.7 ¢ inflation adjusted annually July 1

Str&Hwy2104-2108  
Base rate  
**Gasoline Excise Tax** 18¢

Now 19.4 ¢ inflation adjusted annually July 1

**Local \$ to RMRA & grants**

**Gasoline Excise Tax** +12¢

Now 13.0 ¢ inflation adjusted annually July 1

**Diesel Excise Tax** +20¢/gal

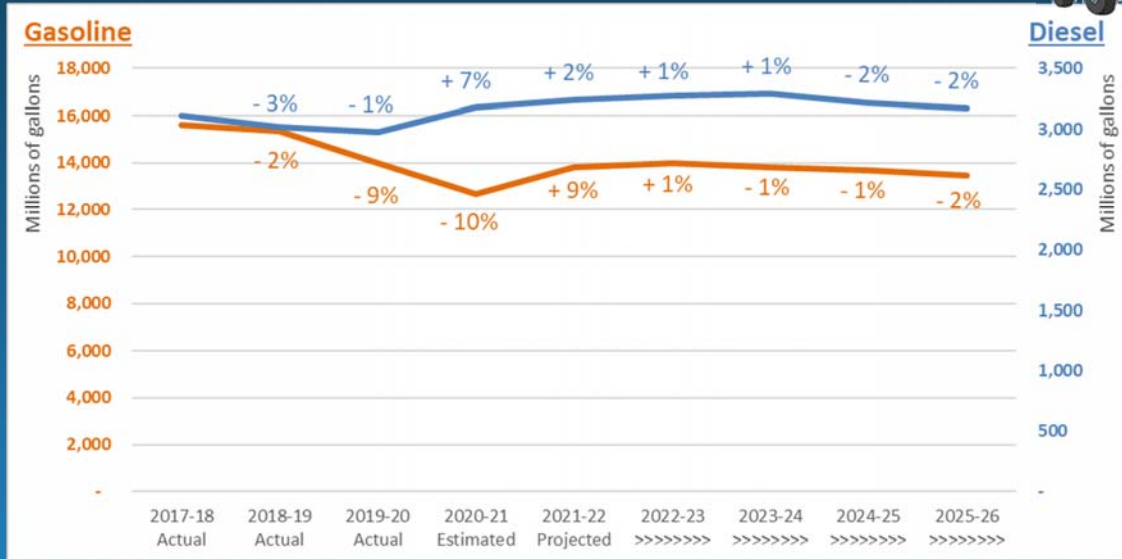
Now 22.0 ¢ inflation adjusted annually July 1

**Transportation Improvement Fee**  
\$25 to \$175/year depending on auto value

Now \$27-192 inflation adjusted annually January 1

**ZEV Registration Fee**  
\$100/yr on 2020 models / later  
inflation adjusted annually July 1

# Fuel Consumption



# Fuel and Registration Tax Increases



July 1, 2021: 1.2% (July 1, 2020 increase was 6.8%)

**Gasoline Excise Tax**  
50.5¢ → 51.1¢

**Transportation Improvement Fee**

**SB1 Transportation Improvement Fee**

Vehicle Value	Effective Date		
	Jan 2018	Jan 2020	Jan 2021
0 - \$4,999	\$ 25	\$ 27	\$ 27
\$5,000 - \$24,999	\$ 52	\$ 54	\$ 55
\$25,000 - \$34,999	\$ 105	\$ 107	\$ 110
\$35,000 - \$59,999	\$ 157	\$ 161	\$ 165
\$60,000 & over	\$ 183	\$ 188	\$ 192

Plus new ZEV Registration Fee  
\$100/yr on 2020 models / later

**Diesel Excise Tax**  
38.5¢ → 39.6¢

# American Rescue Plan Act (ARPA)

- ❖ Passed by Congress March 3 and signed into law March 10, 2021.
- ❖ Includes “Coronavirus State and Local Fiscal Recovery Funds”
  - \$350 billion to states
  - \$130.2 billion to cities and counties (municipalities)
  - \$20 billion to Tribal Governments
- For California:
  - 191 Metro Entitlement cities above 50,000 population = \$7.004 billion
  - 291 “non-entitlement” cities = \$1.218 billion
  - 58 California Counties = \$7,675 million
  - \$26 billion for the State



## ARPA: Use of Funds – the Four Categories

- A.** to respond to the public health emergency or negative economic impacts associated with the COVID19 emergency  
assist households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality
- B.** to support essential workers  
premium pay to eligible workers
- C.** to backfill a reduction in revenue since 2018-19
- D.** for water, sewer (incl. wastewater), or broadband infrastructure.



## ARPA: Use of Funds – limitations

1. Generally, the covered period is March 3, 2021-December 31, 2024 (IFR p.88)
2. Must be obligated by Dec 31, 2024, expended by Dec 31, 2026 (IFR p.88)
3. May not spend funds on pension deposits (IFR p.71)
4. May not be used to replenish rainy day funds, financial reserves, etc. (IFR p.42, 60)
5. May not be used for debt obligations (IFR p.42)
6. May not be used as non-Federal Match for other Federal Programs (IFR p. 86)



## Eligible Uses of Section “C” Qualified ARPA

Once qualified as revenue loss, Section C funds may be expended on ...

“Government services” that directly provide services or aid to citizens

### Limitations:

1. To cover costs incurred March 3, 2021-December 31, 2024;
2. Must be obligated by Dec 31, 2024, expended by Dec 31, 2026;
3. May not spend funds on pension deposits;
4. May not be used to replenish rainy day funds, financial reserves, etc.;
5. May not be used for debt obligations;
6. May not be used as non-Federal Match for other Federal Programs.



# California's Local Sales and Use Tax: A Primer on "Sourcing" Rules and Allocation

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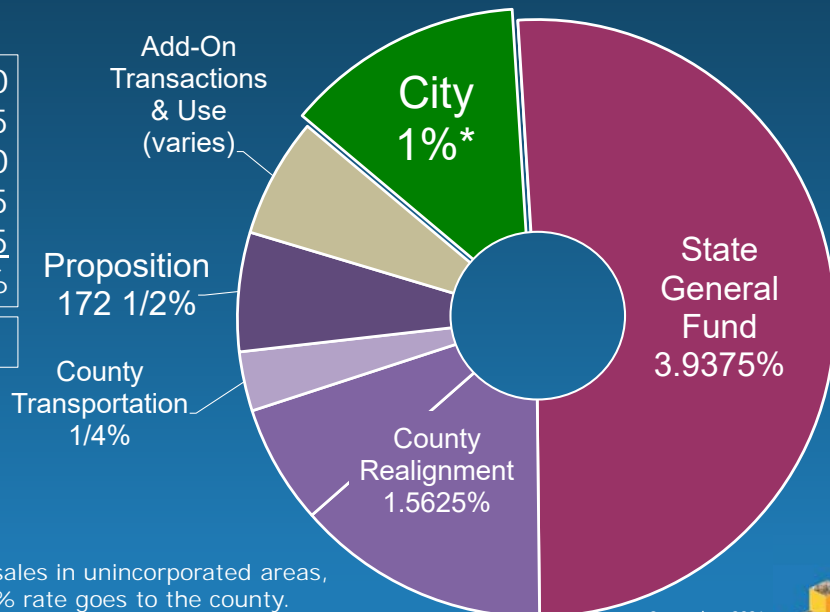


See Chapter 2.01 of the *Municipal Revenue Sources Handbook*

## Where Your Sales Tax Goes

City*	1.00
Co Transp	0.25
Prop172	0.50
Co Realign	1.5625
State GF	3.9375
<b>Total Base</b>	<b>7.25 %</b>

+ Add-on TrUTs .....



\* For taxable sales in unincorporated areas, the local 1% rate goes to the county.

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# “Sourcing”

The rules used to determine the **place of sale (the “situs”)**, and therefore,

- which tax rates are applied to a given purchase and
- which jurisdictions are entitled to the local taxes generated from a particular transaction.

In most cases, this doesn’t affect over-the-counter sales where the location of the business and the location of receipt by the purchaser are the same.

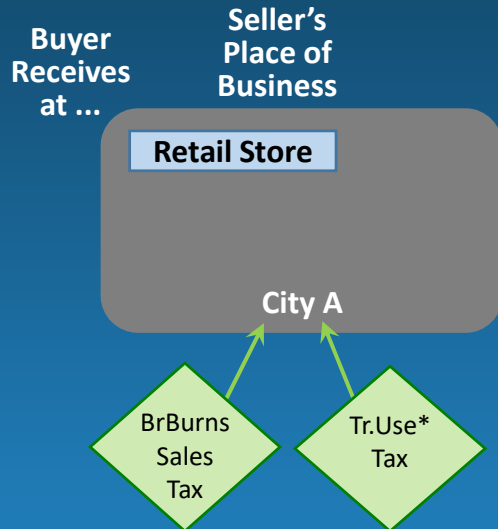


## Local Add-On Sales Taxes a.k.a. “Transactions and Use Taxes” or “District Taxes”

- ✓ **64** TUT measures were approved November 2020
  - **14** extensions of existing rates
  - **50** new or increase rates. All majority vote general purpose except two:
    - 1/8 cent SF Bay Area three county Measure RR tax for passenger rail
    - 1/4 cent Sonoma County Measure DD tax for affordable housing
- ✓ **263** cities\* have approved add-on sales tax rates (TUT)
- ✓ **33** counties have at least one countywide TUT
  - including “self-help” transportation rates
- ✓ **3** counties have rates that apply only in unincorporated areas

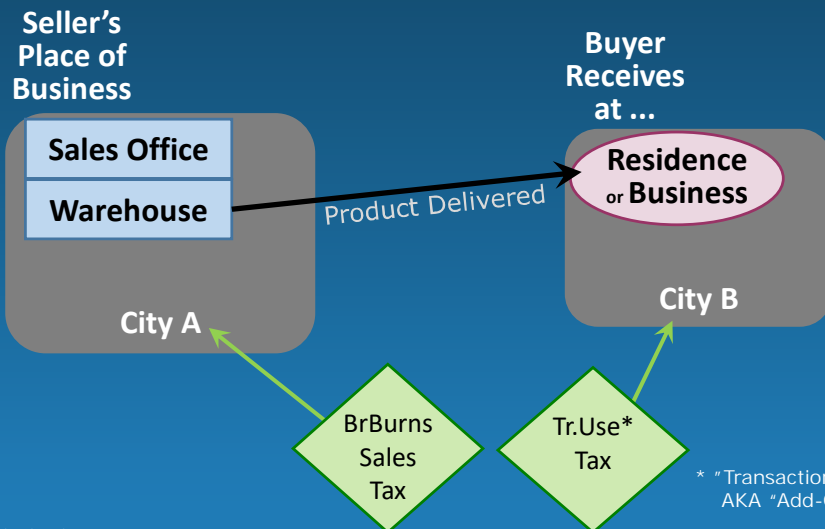


# Over the Counter Sale



\* "Transactions and Use Tax"  
AKA "Add-On Sales Tax"

# Remote (Online) Sale Seller with *In-State* Presence



**Issues**

- Concentration of BB revenues
- Revenue kickback agreements

**Good News**

- AB147/Wayfair improving TrUT collections

\* "Transactions and Use Tax"  
AKA "Add-On Sales Tax"



# Automobile Dealership Sale

Seller's Place of Business

Dealership



Buyer registers at ...

Residence or Business

City B

City A

BrBurns Sales Tax

Tr.Use\* Tax

*There has been no strong reason or interest in changing this*

\* "Transactions and Use Tax" AKA "Add-On Sales Tax"

# Remote (Online) Sale

Seller with Out-of-State Presence

Seller's Place of Business

Sales Office

Warehouse

*Out of State*

Buyer Receives at ...

Residence or Business

City B

## Issues

- This is not "situs"
- We now send TrUT to destination city ... we can send BB too

City C

City D

City E

County

Countywide pool

Tr.Use\* Tax

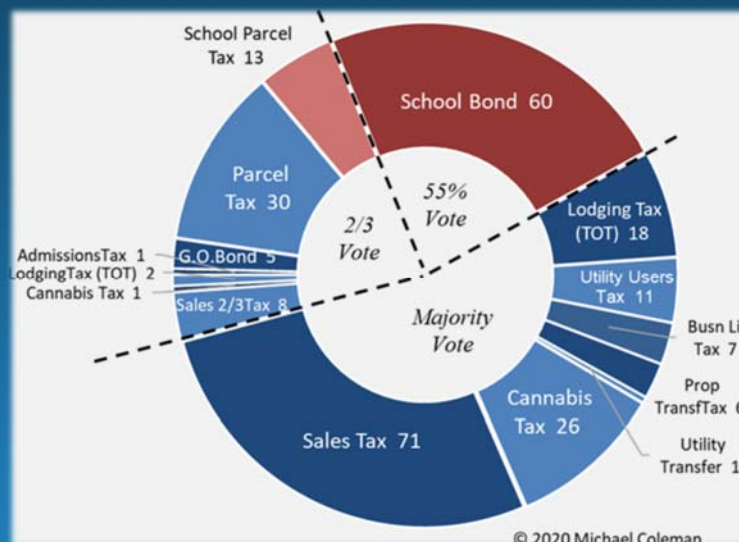
BrBurns Use Tax

**Exception:** BB Use Tax on transactions of \$500,000+ is sourced to destination city,\* not pool. Reduce this threshold to \$50,000 (or other \$).

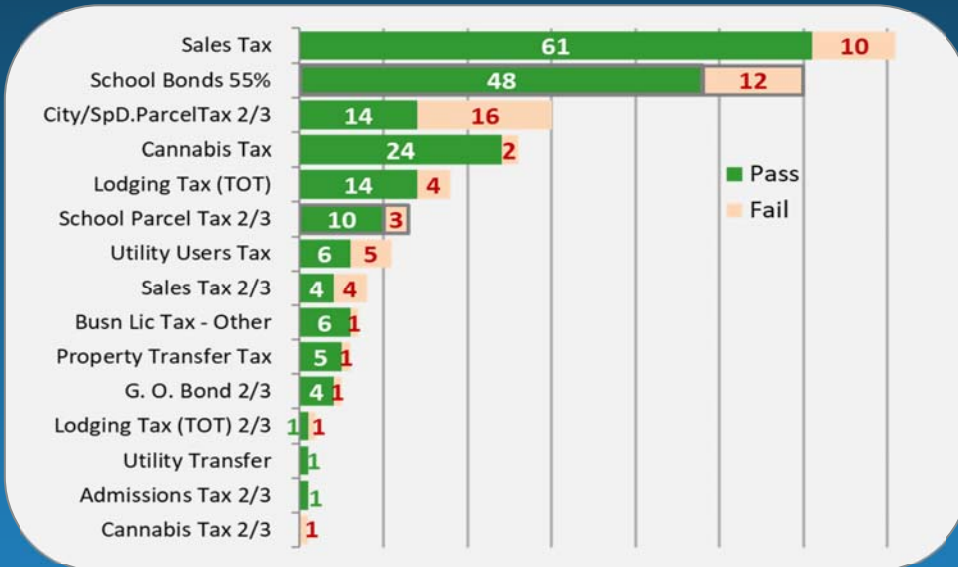
# Local Tax and Bond Measure Results



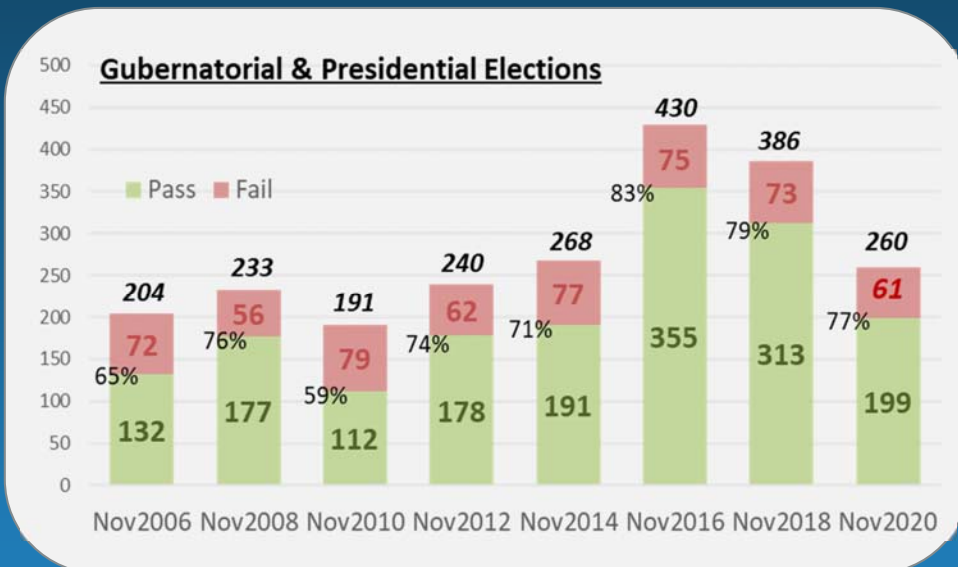
# Local Tax & Bond Measures November 2020



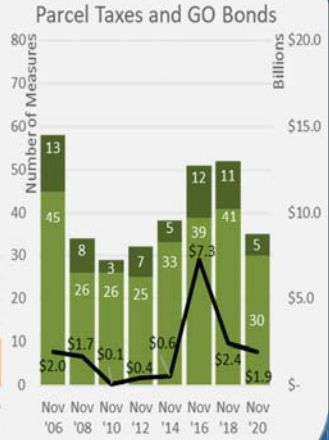
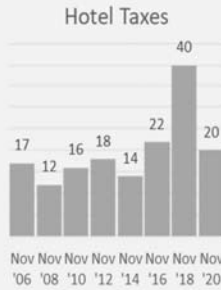
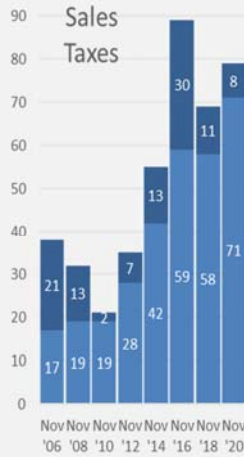
# Local Tax & Bond Measure Results November 2020



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# Business License Taxes

- *Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924
  - DCA concluded Prop. 218 does not require 2/3-voter approval of tax imposed by initiative, only of taxes proposed by government; Supreme Court affirmed
  - Dispute over scope of decision
    - Portions hold article XIII C, § 2 does not apply to voter-initiated taxes, and some argue this means all parts of § 2 do not apply Other parts suggest only parts of § 2 – specifically, that requiring an election on a general tax at a general election – does not apply
    - Court identified “loophole” that might allow governing body to adopt special taxes without 2/3 vote



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# Business License Taxes

- Following *Upland*, SF City Attorney opined that initiative special taxes can be approved by simple majority
- June 2018 SF ballot included Propositions C and D, nearly identical taxes on commercial landlords
  - C required simple majority; D required 2/3
  - C passed with 50.87%; D failed with 55.07%
  - HJTA sued in August 2018
- November 2018 Ballot included another Measure C to increase business license taxes to fund homeless services; it received 61% and drew suit, too



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# *Upland* & Special Taxes With Majority Voter Approval

*City & County of San Francisco v. All Person Interested in the Matter of Proposition C* (2020) 51 CA5th 703, review denied Sep. 9, 2020

- Business license tax increase to fund homeless programs got 60% approval
- City filed validation action; HJTA and business groups opposed
- DCA held initiative proposing special tax may pass w/ 50%+1 approval despite
  - Prop. 13
  - Prop. 218
  - City charter



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## Still More on *Upland*

- *HJTA v. City & County of San Francisco* (2021) 60 Cal.App.5th 227
  - Followed the first SF case; another victory for the City
- *City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884
  - Followed the SF case, ruling for Fresno

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## More on *Upland*

### Other suits

- *City & County of San Francisco v. All Persons Interest in the Matter of Proposition G*, SFSC No. A160659
  - City won at trial, affirmed on appeal 7/26/2021
- *Jobs & Housing Coalition v. City of Oakland* (1<sup>st</sup> DCA No. A158977)
  - City lost validation action
  - Appeal fully briefed as of 2/1/21
- *Alameda Co. Taxpayers Assn v. County*, ACSC Nos. RG 2007 0099, RG 2007 0495
  - Validation and reverse validation cases filed 08/20 & 09/20

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# Sales & Use Tax

- Statute imposes a 2% cap on all local sales & use taxes
- Race-to-the-cap has begun in LA and Bay Area
- 2019 legislative proposals to lift the cap for some cities and counties
  - AB 618 (Scotts Valley, Emeryville) – vetoed
  - AB 723 (Alameda County and its cities) – Chapter 723 of the Statutes of 2019



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# Sales & Use Tax

- Governor's Emergency Order N-40-20
  - 90-day extension of sales tax returns and payments
  - To be repaid in 12 monthly installments
  - Interest free
  - Up to \$50k with possible payment plan for more
  - Payments begin 8/31/20, end July 31, 2021
  - CDTFA guidance available at:  
[www.cdtfa.ca.gov/services/covid19.htm](http://www.cdtfa.ca.gov/services/covid19.htm)



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# Sales & Use Tax

- SB 792 (Glazer, D-Orinda)
  - Retailers with gross receipts > \$50m would have to file a schedule by local government of the situs of its sales
  - Seems the first step in an effort to revisit allocation of sales taxes among jurisdictions
  - Senator Glazer has repeatedly (and unsuccessfully) sought to rein in sales tax kick-back agreements between host local governments and large sales tax generators
  - In Assembly Appropriations as of 7/22/21



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# Sales & Use Tax Enforcement

- *CDTFA v. Superior Court (Kintner)* (2020) 48 CA5th 922
  - CDTFA sought to enforce sales tax against corporate principals
  - They sued for declaratory relief to prevent enforcement
  - Trial court refused CDTFA's demurrer on the "pay first litigate later" rule
  - DCA granted an appellate writ to require the trial court to grant the demurrer
  - Very nice, strong statement of the "pay first" rule.



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# Soda Taxes

*Cultiva La Salud v. State of California*, Sacto Sup. Ct. Case No. 34-2020-800003458

- Challenges 2018's AB 1838 — legislative deal to preempt charter city soda taxes until 2031 in exchange for California Business Roundtable abandoning initiative to amend the CA Constitution to make nearly all government revenues subject to voter approval
- Case argues Legislature cannot preempt charter city authority in this way
- But how to collect the tax if the CDTFA is forbidden to assist? Like other business license taxes perhaps
- Writ to be briefed summer 2021

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# Business License Taxes

*Tesoro Logistic Operations, LLC v. City of Rialto* (2019)  
40 Cal.App.5th 798

- Rialto voters approved a tax on petroleum storage
- Trial court ruled for City in taxpayers' challenge.
- DCA reversed, concluding City guidelines to narrow the tax to make it constitutional were an impermissible amendment of a ballot measure, the voter-approved tax was a property tax preempted by Prop. 13.

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# Cannabis Taxes

- *Silva v. Humboldt County* (2021) 62 Cal.App.5th 928
  - County ordinance changed substance of voter approved tax and was therefore beyond Board of Supervisors authority

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# Property Tax

- Prop. 19: "The Home Protection for Seniors, Severely Disabled, Families and Victims of Wildfire or Natural Disaster Act"
  - Allows xfer of Prop. 13 assessment by seniors and others with new liberality
    - Statewide, not just participating counties
    - Can trade up, not just down-size
    - Can do it 3 x in a lifetime
    - Closes some loopholes for heirs
      - they must live there
      - Limits exclusion to \$1m in fair market value
      - \$ 500k assessed valuation, \$2m fmv = \$1m assessed value
      - No exclusion for non-primary residences
    - Passed 51.1% to 48.9%
    - Effective 2/16/21 (parent-child) and 4/1/21 (portability)

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# Property Tax

- *Los Angeles Leadership Academy v. Prang* (2020) 46 CA5th 270
  - Charter school not exempt from property taxes or special assessments
  - Implied exemption for property owned and used by government can be overcome by express legislation to the contrary
  - This implied exemption does not extend to non-government operator of charter school

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# Documentary Transfer Tax

- *731 Market Street Owner, LLC v. City and County of San Francisco* (2020) 50 CA5th 937
  - Leases > 35 years treated as taxable under DTT
  - But sale of a building subject to such a lease does not trigger tax if the lease not otherwise changed
  - City ordinance, state statute, and former federal statute all construed alike

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# Documentary Transfer Tax

- *Ashford Hospitality v. City & County of San Francisco* (2021) 61 Cal.App.5th 498
  - Tiered documentary transfer tax did not violate equal protection
  - Generally, the ability to pay is a justification to ask someone to pay more (i.e., progressive income taxes)
  - But 1935 SCOTUS opinion found a progressive gross receipts tax violated equal protection; the case is still good authority but is ready very narrowly



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# Parcel Taxes

- *Borikas v. Alameda USD* (2013) held statute required parcel taxes to be uniform, disallowed common structure of \$x / dwelling unit and \$y / non-residential sq. ft.
- *Dondlinger v. LA County Regional Park & Open Space Dist.* (2019) 31 Cal.App.5th 994 held tax of \$0.015 / sq. ft. of improved property was "uniform" and a permissible excise tax, not a preempted property tax



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## Parcel Taxes

- *Mendocino Redwood Company, LLC v. County of Mendocino* (2019) 42 CA5th 896
  - Challenge to Fire District's special parcel tax was not protected by the validation statutes from challenge by commercial timber operator
  - That claim was an ordinary property tax refund action subject to a four-year statute of limitations

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## Parcel Taxes

- *Valley Baptist Church v. City of San Rafael* (2021) 61 Cal.App.5th 401
  - Churches and non-profits exempt from 1 % ad valorem property tax, not from special parcel taxes

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## Notice of Parcel Taxes

- Mailed notice of a new parcel tax required to property owners who do not reside in the jurisdiction
- 2016 statute, effective 2017
- AB 2476 (Daly, D-Anaheim) adopting Gov Code section 54930



## Vacancy Taxes

- Some cities, in the US and abroad, have proposed or adopted taxes on unoccupied residential units to encourage their return to the housing market
  - Vancouver, BC
  - Washington, DC
  - Oakland, CA
  - LA proposal deferred to 2022
  - SF voters approved tax on vacant commercial parcels, but BOS deferred enforcement to 2022
- May be a valid excise tax, but could require 2/3 voter approval



## Measure A / Measure B Taxes

*Coleman v. Co. of Sta. Clara* (1998) 64 CA4th 662 allows general tax to be combined with advisory measure; did not apply Prop. 218

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## Measure A / Measure B Taxes

*Johnson v. County of Mendocino* (2018) 25 Cal. App.5th 1017

- *Coleman* survives Prop. 218
- Courts look not to legislative motive, but legislation's language, to determine its effect
- HJTA's 1997 annotation of Prop. 218 is not authority for its construction
- Nice statement of very deferential Equal Protection test of tax distinctions

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# Bed Taxes on Short-Term Rentals

*San Francisco v. Homeaway.Com, Inc.* (2018) 21 Cal.App.5th 1116

- SF subpoenaed Homeaway's records to identify illegal short-term rentals, Homeaway resisted and City obtained court order, affirmed on appeal
- Federal Stored Communications Act was not an obstacle to City's information gathering
- Homeaway lacked standing to assert privacy rights of its customers
- No violation of rights of free association
- Subpoena was not overbroad

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# Utility Users Taxes

Trial court challenges to UUTs on natural gas service

- *Lavinsky v. LA*: class action challenge to including state surcharges in tax base – settled
- *Engquist v. LA*: class action challenge to including monthly customer charge in tax base – settled

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# Utility Users Taxes

- *City of Torrance v. Southern California Edison Co.* (2021) 61 Cal.App.5th 1071
  - Cap and trade greenhouse gas program produces credits against power bills
  - Utilities and PUC decided those credits reduce local UUT tax bases, but text of ordinances is to the contrary
  - Torrance sued SCE to force it to collect tax on the credits, lost in the trial court, won on appeal
  - Affects all 104 cities and counties with electricity UUTs
  - Case is back in the trial court, but should settle and restore these revenues

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# Telephone Taxes

*MetroPCS California, LLC v. Picker* (9<sup>th</sup> Cir. 2020) 970 F.3d 1106

- Trial court enjoined enforcement of the Prepaid Mobile Telephony Services Surcharge Collection Act as preempted by federal law
- LCC expressed concern in 12/18 CDTFA would interpret it to forbid collection of local UUTs on prepaid wireless telephony
- CDTFA issued an advisory that same month informing carriers that the State's fee was suspended, but not local taxes
- 9<sup>th</sup> Circuit concluded statute not preempted and reversed.

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# Telephone Taxes

- SB 1441 (McGuire, D-Sonoma)
  - Extends sunset on Local Prepaid Mobile Telephony Services Collection Act to 2026
  - That statute provides for CDTFA collection of state and local telephone taxes on prepaid telephony with sales tax
  - Governor signed on 9/25/20



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# Utility Taxes / General Fund Transfers

- *Wyatt v. City of Sacramento* (2021) 60 Cal.App.3d 373
  - Post-218 approval of GFT from water, sewer, and trash utilities to general fund as a general tax was lawful
  - Plaintiffs had argued that Prop. 218 forbids all general UUTs
  - Victory means UUTs are safe and GFTs can be approved by voters
  - Same issue pending in *Kimball v. Long Beach*, 2d DCA Case No. B305134
    - To be argued 9/21/21



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## Parking Taxes

*CCSF v. UC Regents* (2019) 7 Cal.5th 536

- Charter city may compel UCs and CSU to collect parking tax on use of campus lots by third parties
- Did not undermine the older test distinguishing governmental from “proprietary” activity, but applied balancing test drawn from charter city preemption cases and cases involving collection of UUTs by utility districts which are, technically, state agencies.
- Nice victory for local government
- Will apply broadly to third-party taxes like UUTs, hotel taxes, parking taxes, etc.

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## State Water Project Taxes

- State Water Contractors have pre-Prop. 13 authority to impose a property tax to fund their obligations to the DWR under the SWP contracts
- *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900 held such taxes survived prop. 13 because the State Water Project and its associated contract, debts and taxes were pre-Prop. 13 debt
- *Goodman* rule reaffirmed in *Coachella Valley Water Dist. v. Superior Court* (2021) 61 Cal.App.5th 755
- May be important to pending discussions of a Delta conveyance / “the big Fix”

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# Tax Ballot Measures

- AB 809 (Oberholte, R-Hesperia)
  - Effective 1/1/16, Elections Code section 13119 requires ballot labels to disclose amount to be raised annually by “initiative measure” that “imposes a tax or raises the rate of a tax”
  - Intended to apply to school bonds, but those are proposed by Board resolution, not initiative



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# Tax Ballot Measures

- AB 195 (Oberholte, R-Hesperia)
  - Effective 1/1/18, amends Elections Code § 13119 to apply to all ballot measures that propose taxes
  - Label must be: “Shall the measure (stating the nature thereof) be adopted?”
  - Must state “the amount of money to be raised annually and the rate and duration of the tax”
  - Label “shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.”
  - Purports to apply to charter cities, but many charter cities adopt the Election Code anyway.



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# Tax Ballot Measures

- AB 1194 (Dababneh, D-San Fernando Valley)
  - Amended Elections Code § 9401 effective 1/1/18
  - Applies to bond proposals, which are more common for schools than other local governments
  - Requires ballot book to include an estimate of average annual tax rate required to fund proposed debt & its term



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# Tax Ballot Measures

## SB 268 (Wiener, D-San Francisco)

- Vetoed 10/13/19
- To approve taxes w/ more than one rate, ballot book (not label) must:
  - Describe purpose of measure and use of funds
  - List all tax rates and describe how tax imposed
  - Describe "any mechanism that would cause the tax rate or rates to vary over time"
  - State the duration of the tax
  - State "[t]he best estimate from official sources of the average annual dollar amount of tax that would be collected" in first 10 years



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# Tax Ballot Measures

## SB 268 (Wiener, D-SF)

- To approve bonds, ballot book (not label) must estimate
  - Average annual tax rate
  - Expected pay-off of bonds & sunset of tax
  - Highest tax rate
  - Total debt service
  - “the statement may contain a declaration of policy of the legislative or governing body of the applicable jurisdiction, proposing to use revenues other than ad valorem taxes to fund the bond issue, and the best estimate from official sources of these revenues and the reduction in the tax rate levied to fund the bond issue resulting from the substitution of revenue.”

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# Taxpayer Actions

## *McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951

- Consumers cannot sue retailer for over-collection of sales tax
- Courts create remedies for tax refunds only in narrow circumstances
- Due process not offended by absence of remedy
- Any remedy must come by legislation
- LCC did amicus brief

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## Taxpayer Actions

*North Carolina Department of Revenue v. The Kimberly Rice Kaestner 1992 Family Trust* (2019) 139 S.Ct. 2213

- Due Process clause of federal constitution limits State and local governments' power to tax economic activity w/ minimum connection to the taxing agency.
- Presence of a trust beneficiary in No. Carolina did not create sufficient connection to allow the state to tax the trust.

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## Taxpayer Actions

*Steuer v. Franchise Tax Board* (2020) 51 Cal.App.5<sup>th</sup> 417

- Trust which earned taxable income in CA is subject to tax here even if the trustees resided elsewhere
- But no taxable income to contingent beneficiary until income received (i.e., contingency ripened)
- Involves estate plan of the owner of the Century Theater and Cinemark chains

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# Revenue Enforcement

*City & County of San Francisco v. Uber Technologies, Inc.*  
(2019) 36 Cal.App.5th 66

- City sought data from Uber to enforce parking, traffic and safety ordinances. Uber refused, claiming the PUC had exclusive enforcement authority.
- City issued legislative subpoenas and sued to enforce them. The trial court issued the order; Court of Appeal affirmed.
- Statute authorizes city councils and boards of supervisors to issue legislative subpoenas to investigate anything subject to local regulation. They often require suit to enforce, but are a powerful tool.

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# 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
  - No longer good law due to *Ventura v. United Water* on one point – that groundwater charges subject to 218, now it is 26

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# 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
  - Holding groundwater charges subject to 218 no longer good law under *Ventura*; but other holdings still useful



# 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 if classes rationally drawn



# Groundwater Extraction Charges

*Ventura v. UWCD* (2017) 3 Cal.5th 1191

- Groundwater charges subject to Prop. 26, not 218
- Remanded to decide if:
  - 3:1 ratio of ag. to non-ag. rates mandated by Water Code §75594 violates Prop. 26
  - Adequate justification for rates on UWCD's record
- DCA remanded to UWCD for a new hearing
- Review denied, litigation resumes in trial court, along with previously stayed cases involving subsequent years

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# Groundwater Extraction Charges

*Great Oaks Water Co. v. Sta. Clara Valley WD*, 6<sup>th</sup> DCA  
Case No. H035260, S Ct. Case No. S252978

- Grant & hold behind *Ventura*
- On remand to DCA, unpublished victory for SCVWD
- Groundwater charges not subject to Prop. 218, no Prop. 26 argument preserved for appeal
- Claim rates violated District's Act reviewed very deferentially; plaintiffs' trial victory reversed
- District did not obtain publication; SCOCA denied review 2/22/19

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# Groundwater Extraction Charges

The Great Oaks saga continues:

- *Great Oaks Water Co. v. Santa Clara Valley Water District*, Sta. Clara Superior Court Case No. 2011-1-CV-205462
- Consolidates 15 cases challenging, or seeking to enforce, SCVWD's pump tax



# Groundwater Extraction Charges

Sustainable Groundwater Management Act (Water Code § 10720 et seq.)

- 400+ new Groundwater Sustainability Agencies
- To fund and implement plans to bring groundwater basins into balance
- New fees on groundwater use expected to be adopted consistently with Prop. 218 (for supply) and Prop. 26 (for regulation)
- *Ventura* says Prop. 218 compliance not constitutionally required; will require legislation to relax this requirement; may not be politically feasible



# Groundwater Extraction Charges

First lawsuit filed under SGMA to contest reliance on earlier groundwater plan:

- *Sloughhouse RCD v. Sacramento Central Groundwater Authority*, Sacto. Superior No. 34-2017-80002529
  - Alleged CEQA, CCP 526a, writ and declaratory relief claims under SGMA
  - Stayed pending DWR decision whether to accept earlier plan as SGMA plan
  - DWR disapproved that plan on 11/12/19 and litigation settled



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# More SGMA Suits

*Mojave Pistachios, LLC v. Indian Wells Valley Groundwater Authority*, Kern Co. Sup. Ct. No. BCV-20-102284 filed 9/30/20

- Challenges GSP, sustainable yield report, and extraction fee
- Alleges writs, validation, takings, constitutional claims, and CEQA violations
- Fee of \$2,120 / AF and allocation of water to China Lake NAWS
- Consolidated with other cases in Orange County
- *Searles Valley Minerals v. Indian Wells Valley Groundwater Authority*, Kern Co. Sup. Ct. filed 10/2020
  - Focuses on the replenishment fee



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# Water Meter Shut-Offs

- SB 998 (Dodd, D-Napa)
  - HSC § 116900 et seq. requires water utilities w/ > 200 customers to adopt a policy on residential service shut-offs to protect low-income customers
  - Arguably requires policy to be translated into several languages whether or not spoken in the community
  - Requires annual forgiveness of interest, caps repayment obligations, forbids turn-offs if customer has doctor's note
  - Will increase bad debt, may prompt policies to require credit-worthiness or security deposits
  - Mandates claim, challenge as violating Prop. 218 by compelling improper cross-subsidy possible; litigation, too
  - Effective 1/1/19

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# Prop. 218 & Water Rates

*City of Palmdale v. Palmdale Water District* (2011) 198  
CA 4th 926

- City challenged conservation water rates, claiming Prop. 218 disallows them
- DCA found 218 and Constitutional provision against wasting water (art. X, § 2) could be harmonized, but struck down PWD rates as insufficiently justified
- Conservation rates must be set carefully

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## Prop. 218 & Water Rates

*Capistrano Taxpayers Assn v. City of San Juan Capistrano*  
(2015) 235 CA4th 1493

- Must satisfy water conservation mandate of article X, § 2 and Prop. 218
- Domestic rates can fund recycled water as supply program
- Tiered rates require precise cost-justification
- Disagrees with other cases and therefore trial courts need not follow it
- SCOCA read narrowly to invalidate rates b/c city offered no cost justification

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## Prop. 218 and Tiered Rates

- Capistrano's last chapter
- *Daneshmand v. City of San Juan Capistrano* (2021) 60 Cal.App.5th 923
  - City settled the original case, making refunds in exchange for releases
  - Class action lawyers sued for more, arguing breach of contract, and other common law claims
  - Trial court gave the City summary judgment, enforcing releases and the Dansoman 1-year claiming requirement of the Government Claims Act
  - Court of Appeal affirmed

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## Prop. 218 & Water Rates

*Morgan v. Imperial Irr. Dist.* (2014) 223 CA4th 892

- No separate protest vote on water rates on domestic, municipal, industrial and agricultural water customers
- Full cost recovery
- Data need not be perfect



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## Prop. 218 & Water Rates

*Green Valley Landowners Assn v. City of Vallejo* (2016)  
241 CA4th 425

- Restates "pay first, litigate later" rule
- Urban water rates need not subsidize higher cost of service to exurban system



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# Prop. 218 & Water Rates

- Challenges to tiered water rates following *San Juan Capistrano* in:
  - *Marin Municipal Water District* – DCA found no duty to exhaust, SCOCA denied review, MWD lost liability phase; now trying remedy
  - *City of Glendale* – unpublished victory, publication & review denied, settled
  - *Goleta Water District* – unpublished victory, request to publish denied
  - *San Jose* (City prevailed b/c it ended tiered rates in 2017 and Pl. didn't show class could litigate refund efficiently; appeal G060382 & G060385 fully briefed)
  - *Heath v. Western MWD*, Riverside No. RIC1806590
    - Upheld WMD's tiered rates 10/17/19, no appeal
  - *Patz v. San Diego*, SDSC No. 37-2015-00023413 – argued 6/14/21, decision likely late summer 2021
  - *Coziahr v. Otay Water District*, SDSC No. 37-2015-00023413 00400000 – trial court invalidated tiered rates in 3/4/21 order, remedies phase continues
  - *Dreher v. LA DWP*, LASC No. 19 STC CV 07272 – petition challenging order disallowing extra-record expert evidence at trial denied (2d DCA Case No. B312017); case continues

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# Prop. 218 & Water Rates

- Still more suits:
  - *Campana v. EBMUD*, ACSC No. RG 2005 0136 (tiered rates and statute of limitations defense)
  - *Chinitz v. City of Sta. Cruz*, SCSC no. 19 CV 03364 (tiered rates)

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## Prop. 218 & Water Rates

- Unpublished case on tiered rates in
  - *Boyd v. Soquel Creek Water Dist.*, 2016 WL 1752932
    - District's trial court win against pro per reversed on appeal and remanded for trial on 6(b)(3)[rates proportional to cost] but affirmed on 6(b)(4) [immediately available water service]
  - *Delano Guardians Comm. v. City of Delano*, 2018 WL 5730155
    - City victory in trial court affirmed on various grounds; tiered rates challenge rejected on appeal because not raised at trial



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## Prop. 218 & Water Rates

- Albany, CA law firm of Driscoll & Omens filed dozens of identically worded claims w/ water agencies around CA in 11/19
- Each asserted the agency's rates violated Prop. 218, w/o elaboration
- One combined suit against 83 agencies filed in March 2018 in San Jose: *Kessner v. City of Santa Clara*, SCSC Case No. 20 CV 364054
  - First round of demurrers was inconclusive
  - Second round to be heard summer/fall 2021



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# Water Rates

- SB 323 (Caballero, D-Salinas)
  - Would establish a 120-day statute of limitations to challenge water rates, comparable to that for power rates
  - Sponsored by ACWA
  - Passed Assembly unanimously 09/09/2021. Transferred to Senate.



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# Water Rates

- SB 222 (Dodd, D-Napa)
  - Establishes a state-funded Water Rate Assistance Fund to help low-income ratepayers pay for water
  - Moved to inactive file 09/03/2021
- SB 223 (Dodd, D-Napa)
  - Extend SB 998 (2018) limits on water meter shutoffs for nonpayment to very small community water systems with funding support from the State
  - Pending in Senate Appropriations as of 5/20/21



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## Water Rates

- *KCSFV I v. Florin County Water Dist.* (2021) 64 Cal.App.5th 1015
  - Invalidated water rates for inadequate notice of rates and insufficient cost justification
  - Very good discussion of procedural defenses for Prop. 218 cases
  - Bad decision for Florin CWD but good news for the rest of us
  - Lesson learned – hire a ratemaking consultant to cost-justify your rates unless you have the resources to do it inhouse. You cannot just convert your budget into an across-the-board rate increase.

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## Water Rates

*Miner's Camp LLC v. Foresthill PUD*, 3<sup>rd</sup> DCA Case No. C088828

- Rates include a charge to master-metered properties based on the number of units served by the master meter
- Customer sued without exhausting remedies by participating in the Prop. 218 hearing
- Trial court ruled for property owner on exhaustion and the merits and PUD appealed
- ACWA provided amicus brief
- Fully briefed as of 2/5/21

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## Water Rates

*Sunset Farms, Inc. v. City of Santa Cruz*, Sta Cruz Sup. Ct. Case No. 19 CV 01725

- Farmers' challenge to rate for extra-territorial wholesale service, arguing they should pay same rate the City gives another water district in a water-exchange agreement
- Still in pleading phase



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## Mandates & Prop. 218

*Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5<sup>th</sup> 174

- Districts argued state water quality regulations were reimbursable mandates. State argued they had fee-making power to recover those costs, an exception to the duty to fund mandates
- Districts argued Prop. 218 majority-protest procedure stripped them of rate-making power
- DCA was unpersuaded
- Did cite SB 231 (storm sewer fees exempt from 218 election requirement) favorably



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## Solid Waste Fees

- *Chiquita Canyon, LLC v. County of Los Angeles*, LA Superior Case No. BS171262
  - Challenge to landfill tipping fees imposed via CUP on landfill operator under Mitigation Fee Act
  - Trial court found some fees lacked nexus
    - Park development
    - Natural habitat
    - Disaster debris cleanup
  - Others lacked proportionality
    - AB 939 fee of 25¢ per ton
    - Road impacts of 50¢ per ton
    - \$200k to \$3m for alternative technology research
  - Granted writ 7/2/20, remaining claims to be tried; appeal may be likely

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## Sewer Fees

- Moore v. City of Lemon Grove* (2015) 237 CA4th 363
- Prop. 218 allows full cost recovery
  - Approved informal allocation of public works department costs to sewer utility

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# Sewer Fees

*Plantier v. Ramona MWD* (2019) 7 Cal.5th 372

- Prop. 218 challenge to sewer fees defeated in trial court for failure to exhaust administrative remedies by participating in the Prop. 218 majority protest hearing
- S Ct. reversed, concluding the Prop. 218 majority protest proceeding was not fit to resolve complaint about EDU assignment
- Left open whether plaintiffs must participate in protest hearing to challenge fee increases
- Advisable to establish a local remedy that **does** apply to as-applied and facial challenges and to state in notice of 218 hearing that all challenges will be heard

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# Sewer Fees

SB 231 (Hertzberg, D-San Fernando Valley)

- Effective 1/1/18, defines "sewer" under Prop. 218 to include storm sewers (GC 53750(k))
- Seeks to overrule *HJTA v. Salinas* by statute, citing *Crawley v. Alameda* and *Griffith v. Pajaro*
- This authority is most safely used for stormwater reuse project benefitting water supplies
- Test litigation coming?
- Cited favorably in *Paradise Irr. Dist. v. Comm'n on State Mandates*

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## Sewer Fees

*Marks v. City of San Diego*, San Diego Superior Court Case No. 37-2018-00014112

- Class action challenge to transfer from sewer to water fund to contribute to cost of advanced metering infrastructure
- Claims 50/50 split of AMI cost between utilities violates Prop. 218 because sewer does not benefit equally w/ water
- Trial set for 5/6/22
- Trial court refused extra record evidence, but changed its mind post-*Malott*; City unsuccessfully sought writ review and SCOCA review

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## Sewer Fees

*Fox v. City of Chula Vista*, SDSC Case No. 37-2020-00018032

- Challenges use of water as metric for sewer charges
- Attorney's in pro per suit
- Not very well drafted
- City answered the complaint 7/16/20
- Trial set for 11/12/21

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## Sewer Fees

*Malott v. Summerland Sanitary District* (2020) 55 Cal.App.5th 1102

- Apartment owner sued small agency under Prop. 218 for rates that assign equal EDUs to SFRs and to apartments and condos
- Trial court ruled for agency, refusing to allow after-the-fact, extra-record expert evidence
- Court of Appeal found no duty to exhaust administrative remedies, right to challenge rates in declaratory relief, and right to admit after-the-fact expert evidence
- 5 local government associations sought depublication or sua sponte review but SCOCA denied both
- May be tested in *Hill RHF v. City of LA*, pending in SCOCA

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## Other Service Fees

*County Inmate Telephone Services Cases* (2020) 48 Cal.App.5th 354 Counties provide telephone services to inmates via concession agreements w/ carriers that provide substantial fees to counties

- Statute directs those fees to inmate welfare fund
- Class of inmates sued under Prop. 26
- Court of Appeal ruled they could not challenge the fee because they bear its economic, not legal, incidence
- This standing defense is important in many finance suits

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# Referenda on Fees

- Prop. 218 allows initiatives to repeal or reduce fees
- Can a fee also be referended?
  - *Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105
    - Disallowed referendum, overruling Court of Appeal's earlier, contrary decision
  - *HJTA v. Amador Water Agency* (2019) 36 Cal.App.5th 279
    - 3d DCA disagreed with its own decision in *Wilde*



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# Regulatory Fees

## *CBIA v. SWRCB* (2018) 4 Cal.5th 1032

- Applies *Sinclair Paint* under Prop. 13 to SWRCB fees for water quality programs
- Very deferential review of SWRCB decision to account for 8 programs collectively
- Prop. 26 review of cost justification is fairly deferential
  - Ok that fees > costs because surpluses were declining and stayed in program to underwrite future costs
  - Ok to fund reserves
  - Reasonable estimates are acceptable
- Plaintiff must make a prima facie case of invalidity before burden of proof shifts under 13 and, perhaps, 26
- Helpful discussion of Prop. 26
- Fee vs. tax is legal question reviewed de novo on independent judgment review of the facts



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# Regulatory Fees

- *CBIA v. SWRCB* (2018) 4 Cal.5th 1032
  - Subsidies of fees are permissible if from other sources
  - Cost-to-fee ratio need not be “precise” – “inherent component of reasonableness in this context is flexibility”
  - 3% overcharge of a class as between historic costs and projected fee collections was reasonable, especially as gap was closing over the years in the record
  - Distinguished *San Juan Capistrano* b/c that city “failed to show its property-related fees did not exceed the cost of services attributable to each parcel.”
  - Prop. 218 demands more than Prop. 26 as to proportionality of fee to cost of service

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# Regulatory Fees

- *American Coatings Assn., Inc. v. State Air Resources Board* (2021) 62 Cal.App.5th 1111
  - Upheld fee imposed on makers of paints and other products which emit VOCs
    - Under Prop. 13
    - No illicit delegation of legislative authority to CARB
    - No separation of powers violation
    - No equal protection or due process violation
  - Another example of relatively deferential review of regulatory fees

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# Franchise Fees

## *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248

- SCE agreed to increased franchise fee upon PUC authorization for line item on power bills
- DCA found tax requiring voter approval
- Supreme Court remanded: Franchise fees must reflect reasonable value of franchise
  - Reasonable value may be shown by bona fide negotiations, "other indicia of worth"
  - Also reaffirms that valid fees do not become taxes simply because passed on to rate payers
  - Challenger must bear legal, not economic, burden of fee or tax
- City won remand trial, affirmed on appeal in unpublished decision

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# Franchise Fees

- Similar disputes in Ventura, Bakersfield and San Diego
  - *McNulty v City of Ventura* – stayed pending *Jacks*
  - *King v. City of Bakersfield* – plaintiffs dismissed
  - *Mahon v. San Diego* – City won in trial and appellate courts
  - *Hertz & Enterprise v. San Diego Unified Port District* – Port lost at trial and then settled

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# Franchise Fees

*Mahon v. City of San Diego* (2020) 57 Cal.App.5th 681

- San Diego obliges SDG&E to spend 4.5% of gross receipts on utility undergrounding and the PUC allows SDG&E to recover 3.53% from customers as a line item on bills
- Plaintiffs alleged this is a non-voter approved tax under Prop. 218
- Trial court ruled for city, citing *Jacks* and concluding this was a proper regulatory fee.
- Court of Appeal affirmed only under *Jacks*, concluding: (i) there were good faith negotiations and (ii) there was substantial evidence the fee was reasonably related to value of the franchise

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# Franchise Fees

*Zolly v. City of Oakland* SCOCA Case No. No. S262634,  
fully briefed as of 2/22/21

- Challenge to franchise fee imposed on City solid waste franchisees under Props. 218 and *Jacks v. City of Santa Barbara*
- City prevailed because hauler, not customers, paid fees
- Court of Appeal reversed, concluding allegation of collusion between City and haulers to soak customers was sufficient under *Jacks*
- *County Inmate Telephone Services* said was not standing case
- *HJTA v. Bay Area Toll Authority* disagreed with it
- *Mahon v. San Diego* distinguishes it as a demurrer case

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## Franchise Fees

### *Apartment Owners Association of California v. City of Los Angeles* (2d DCA Case No. B313439)

- Class action challenge by well-known plaintiffs' lawyers to franchise fees on commercial and multi-family haulers under Prop. 218
- City won summary judgment; plaintiffs appealed 6/31/21

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## Other Fees for Use of Public Property

### *Howard Jarvis Taxpayers Assn v. Bay Area Toll Authority* (2020) 51 CA5th 435 (review granted as No. S263835)

- Regional Measure 3 raised Bay Area bridge tolls \$3 to fund a range of transportation projects.
- It did not get 2/3 at the polls or in the Legislature
- DCA upheld it as a fee for the use of property, concluding such fees need not be limited to cost
- It also expressly disagrees with *Zolly v. Oakland*
- SCOCA granted review but held briefing pending decision in *Zolly*

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## Vehicle License Fees

AB 818 (Cooley, D-Rancho Cordova; Quirk, D-Buena Park)

- Latest effort to restore favorable allocation of VLF to newly incorporated cities to reflect the lessened burden on the CHP, which polices county, but not city, roads.
- VLF was reassigned during the State's budget crisis.
- Legislature solved the near-bankruptcy of four newly incorporated Riverside County cities, but has not restored the incentive for new incorporations
- Died in Assembly Appropriations in January 2020

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## Development Impact Fees

*Tanimura & Antle Fresh Foods, Inc. v. Salinas Union HSD*  
(2019) 34 Cal.App.5th 775

- Ag. Business obliged to pay school impact fees for adults-only farm worker housing
- Construes statute, can be explained as reflecting school impacts of economic development (construction workers have kids, too).

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# Development Impact Fees

*Amcal Chico LLC v. Chico Unified School District* (2020) 57 Cal.App.5th 122

- Developer of private apartment for unmarried university students challenged school impact fee
- Claimed failure to make AB 1600 findings, that the fee was an invalid special tax, and a taking
- Trial court granted summary judgment to USD and Court of Appeal affirmed
- Again, construction workers have kids, too. Moreover, once the building exists, there is no guarantee it will always be a private dorm.

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# Development Impact Fees

SB 646 (Morell, R-Rancho Cucamonga)

- Requires water and sewer connection fees to satisfy the "fair or reasonable relationship" standard of Prop. 26, which otherwise does not apply to such fees
- May not change the law much; bill drew no opposition
- Effective 1/1/20

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# Development Impact Fees

## SB 13 (Wieckowski, D-Fremont)

- Promotes accessory dwelling units (“granny units”)
- Prohibits dev. impact fees on ADUs < 750 sq. feet
- New utility connection cannot be required unless ADU is free-standing and fee is proportional to sq. footage or fixture count
- As other units cannot be charged more to make up the difference, this will impose infrastructure costs on existing customers to be recovered by rates
- Effective 1/1/20

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# Development Impact Fees

## AB 602 (Grayson, D- Contra Costa)

- Limits development impact fees on housing, including AB 1600 fees, Quimby fees, construction excise taxes, and Mello-Roos taxes
- Requires nexus study and rough proportionality, including fees allocated per square foot and not per dwelling unit
- Requires HCD to develop model nexus study
- Pending in Senate Appropriations as of 7/23/21

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# Development Impact Fees

- AB 59 (Gabriel, D-San Fernando Valley)
  - Requires 45 days' notice of AB 1600 fees
  - Lengthens time to sue from 120 days of adoption to
    - 90 days to protest
    - Local agency must act on protest and give notice
    - 180 days from notice
  - No action after referred to Local Government Committee in 01/21



# Development Impact Fees

*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290

- Court invalidated City's park impact fees because fee calculated on cost to acquire and improve land, but City already owned the necessary land
- City could treat open space zones as parks for purposes of fee
- Remedy was to declare the ordinance void; not to order the City to repeal it
- Developer got fees as a private attorney general despite its economic interest b/c it benefited other developers and buyers of 4,600 homes



# Development Impact Fees

*County of El Dorado v. Superior Court of El Dorado County* (2019) 41 Cal.App.5th 691

- Statute of limitations to challenge DIFs is one-year
- But suit can be filed after each year's findings, so it serves to limit remedy, but not litigation exposure
- AB 1600 findings are burdensome, but it is very risky not to do a good job on them every year



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# Prop. 26 Litigation

*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



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## Prop. 26 Litigation

### *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 CA4th 1430

- Wholesaler w/ 4 customers could not make rates by class
- Wholesaler w/o groundwater services or regulatory authority could not tie rates to groundwater use (free-rider violation)
- Conservation rates must conserve rate-maker's own supplies



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## Prop. 26 Litigation

### • *City of Signal Hill v. Central Basin Municipal Water District*, LASC Case No. 19 STCP 03882

- Challenge to meter charges, fixed charges on retailers based on meter count, to cover wholesaler's fixed costs
- Trial court issued writ in January 2021 invalidating the charges
- Still contesting remedy as of 07/23/21
- Appeal may be likely



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## Prop. 26 Litigation

*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
- Because fee doesn't fund government, 26 doesn't apply



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## Prop. 26 Litigation

*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1

- Challenge to electric utility PILOT
- Trial court found grandfathered
- DCA found subject to Prop. 26 b/c adopted w/ biennial budget & remanded for cost justification
- Court concluded fees not made taxes by PILOT because non-retail-rate revenues were sufficient to cover it
- Did not reach grandfathering issue or whether cost reasonable b/c comparable to taxes IOUs pay
- Cases pending against other municipal utilities may reach those issues



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## Prop. 26 Litigation

*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1

- Gross proceeds of wholesale transactions treated as discretionary revenue
- May make sense to segregate reserves between those funded by rates and those funded by discretionary revenues
- 26 is plainly less demanding than 218
- Free-riders are a problem only if fee-payers cover them.
- No duty to subsidize rates with discretionary revenue



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## Prop. 26 Litigation

*Webb v. City of Riverside* (2018) 23 Cal.App.5th 244

- Challenge to general fund transfer from power utility rejected under 120-day statute of limitations of PUC §10004.5
- Changing the transfer formula (an expenditure) was not an “increase” that triggers new Prop. 26 claim
- Cited favorably in *Redding*



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## Prop. 26 Litigation

Similar GFT challenges against gas and electric utilities

- Alameda – voters approved GFT in 12/16
- Anaheim (water settled, power: *Palmer v. City*, 30-2017-00938646, 30-2018-01013732 – summary judgement set for 9/24/21)
- Burbank (settled)
- *Beck v. City of Canyon Lake*, Riverside case no. RIC2003025
- Glendale (unpublished decision 12/27/18, publication & review denied; remedy now on appeal by plaintiffs)

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## Prop. 26 Litigation

- Kimball v. Long Beach to be argued in DCA 09/21/21
- Los Angeles (settled)
- *Hobbs v. Modesto Irrigation District* (lost liability phase; remedy phase in discovery)
- *Green v. Palo Alto* (Won power, lost gas; City may appeal)
- *Komesar v. Pasadena*, appeal from City victory under *Wyatt*, B312824 (opening brief due 9/27/21)
- *Simpson v. Riverside*, RSC RIC 1906168 (voter approved water GFT, demurrer under submission)

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## Prop. 26 Litigation

- *Humphreville v. City of Los Angeles* (2020) 58 Cal.App.5th 115
  - GFT not a tax because rates did not exceed cost of service
  - Plaintiff admitted this to avoid the short 120-day statute of limitations for challenges to power rates
  - Amounts to a restatement of *Webb* and *Redding*

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## Prop. 26 Litigation

- Cal. Chamber of Commerce v. CARB* (2017) 10 CA5th 604
- Greenhouse gas auctions did not exceed statutory authority under AB 32
    - Were not taxes under Prop. 13 because voluntarily paid for a valuable right (to emit carbon)
  - Paves way for a new revenue strategy: use power to regulate to impose standard on industry and then allow businesses to buy around it

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## Prop. 26 Litigation

*Otay Mesa Water Dist. v. City of San Diego, Otay Water District v. City of San Diego*, Riverside Superior Court  
Case No. RIC1804278

- Challenges San Diego's allocation of costs for recycled water to other utilities. Argues two recycled water systems should be costed separately
- Tried 7/23/21 on a tentative ruling for San Diego concluding
  - No duty to set separate rates for 2 plants
  - Rates for recycled water were less than cost and therefore satisfied Prop. 26

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## Prop. 26 Litigation

*San Diego County Water Authority v. Metropolitan Water District* (2017) 12 Cal.App.5th 1124

- SDCWA challenged wheeling rate for including costs of SWP rather than only costs to operate Colorado River Aqueduct and prevailed at trial
- DCA overturned that victory, concluding postage stamp rates allowed under statute were also sufficient under Prop. 26
- Core holding likely of little impact on other agencies, but many good holdings

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## Prop. 26 Litigation

*San Diego County Water Authority v. Metropolitan Water District* (2017) 12 Cal.App.5th 1124

- Independent judgment review doesn't allow court to choose between competing methodologies
- Conservation costs could not be recovered from a transportation rate on this record
- Common law standard of rate-making is very deferential
- Did not decide if Met "imposes" rate on SDCWA
- Confirms local governments have standing to assert constitutional claims, upholding SDCWA's preferential rights argument, striking Met penalty on San Diego for litigating the issue

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## State Fire Fees

*HJTA v. California Department of Forestry and Fire Protection* (3<sup>rd</sup> DCA Case No. C086660)

- HJTA challenged state fire fees on parcels in state responsibility areas as a tax under Prop. 26
- Case was dismissed for failure to try it w/in 5 years
- Court of Appeal affirmed in an unpublished decision on 9/15/20.

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# Assessments

*Silicon Valley Taxpayer's Ass'n v. Sta. Clara Co. Open Space Auth.* (2008) 44 Cal.4<sup>th</sup> 431

- Independent judicial review of assessments
- Tighter definition of "special benefit"
- Open space and other services that benefit public broadly harder to justify
- Proportionality requirement unclear



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# BID Assessments

*Dahms v. Downtown Pomona PBID* (2009) 174 CA4th 708 allows:

- exemption of residential property from assessment for security, streetscape maintenance & marketing
- discounted assessments for non-profits
- use of front-street frontage for apportionment, along with lot & building size
- Very generous to agency; later cases less so



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# BID Assessments

*Hill RHF Housing Partners, LP v. City of Los Angeles*  
(2020) 51 CA5th 621 (rev. granted as S263734)

- Affordable housing owner challenged renewal of two LA BIDS, claiming its assessment was not proportionate to its special benefit
- City & BIDs prevailed on the merits at trial
- DCA affirmed for failure to exhaust administrative remedies
  - It is not enough to vote “no”
  - You have to specify the issues you plan to litigate
  - *Plantier v. Ramona MWD* (2019) 7 Cal.5th 372 had reserved this question
  - Important win for local government

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# BID assessments

*Greater Palm Springs CVB v. Red Roof Inn, et al.*, 4<sup>th</sup>  
DCA Case No. E075634

- Action to enforce TBID assessment
- BID prevailed in trial court on basis of the “pay first, litigate later rule”
- Defended by counsel who represents many low-end hotels and has had some success
- Settled for payment of back tax due and exclusion from renewed assessment

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# Utility Undergrounding Assessments

*Tiburon v. Bonander* (2009) 180 CA4th 1057

- No general benefit for utility undergrounding
- Court can look outside agency's record to reach earlier record on same assessment
- Invalidated allocation of assessment and zones of benefit



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# Park Assessments

*Beutz v. Riverside Co.* (2010) 184 CA4th 1516

- Park M&O can be 100% assessment financed b/c capital provided w/ other \$
- Agency must always prove special benefit and proportional allocation — even if challenger doesn't raise them
- Questions use of cost to allocate benefit



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# Fire Suppression Assessments

*Concerned Citizens v. West Point FPD*, Cal. S. Ct. Case No. S195152 (2012)

- Sufficiency of engineer's report to show special benefit or proportionality
- Use of cost to allocate benefit
- Dismissed as moot and DCA opinion not republished

*Davis v. Mariposa County Board of Supervisors* (2019) 38 Cal.App.5th 1048

- County's trial court victory affirmed b/c plaintiff failed to appeal in 30 days allowed for validation actions
- Still no published case upholding assessment funding of services post-*West Point*

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# Maintenance Assessments

*Golden Hill Neighborhood Ass'n v. City of San Diego* (2011) 199 CA4th 416

- Invalidated maintenance district under 1972 Lighting & Landscaping Act for inadequate engineer's report (no basis for allocation of votes to City property)
- Helpfully limited DCA's *West Point* decision and provides guidance for engineers' reports

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## Tourism Marketing Districts

TMD assessments have generated litigation under Prop. 26.

- Ontario prevailed on standing grounds;
- San Diego mooted by amendment to limit assessment to large hotels; fee award reversed on appeal; duplicative suits dismissed by trial court (*Reid* & unpublished victory for City)
- Palm Springs CVB won and then settled



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## GHAD Assessments

*Broad Beach GHAD v. All Persons*, 2d DCA Case No. B304699

- Homeowners formed GHAD to fund beach restoration, approving two assessments without incident
- 2017 assessment to fund expensive Coastal Commission mandates drew controversy
- Trial court found insufficient justification for allocation of special benefit, insufficient general benefit, and concluded assessment should reflect cost of eminent domain to acquire construction access rights
- GHAD appealed; respondents' briefs due 10/1/21



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## Advice re Assessments

- Use a strong, current engineer's report
- Get legal review of reports at least until assessment law stabilizes
- Watch for current developments



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## Mandates

- *Dept. of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546
  - NPDES business inspection mandates not reimbursable b/c local governments can impose fees on regulated businesses
  - Mandate for trash services at transit stops was a reimbursable mandate b/c local governments cannot impose fees on transit agencies



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# General Fund Transfers

*National Asian American Coalition v. Newsom* (2019) 33 CA5th 993

- Mortgage fraud settlement provided \$300+ million to fund consumer credit education, mortgage assistance and similar housing programs.
- Legislature appropriated it for general fund purposes.
- Activist groups sued; DCA ordered reversal of transfer
- Supreme Court granted review and remanded to DCA for reconsideration in light of 2018 budget trailer bill reconfirming the transfer
- DCA again ordered reversal of transfer; review denied

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# Economic Development

SB 531 (Glazer, D-Antioch)

- Would have banned sales tax situs agreements
- They kickback part of tax to retailer for locating sales office in a jurisdiction.
- Vetoed 10/12/19

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## Revenue Bonds

- *San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego* (2021) 63 Cal.App.5th 168
  - San Diego charter provision governing revenue bonds did not apply to JPA bonds
  - Nor did it apply to lease revenue bonds
  - The risk of litigation is always present in public finance
  - JPAs and lease/leaseback financing are immune from many challenges to other debt

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## Taxpayer Actions

- *San Diegans for Open Government v. Fonseca* (2021) 64 Cal.App.5th 426
  - Unincorporated association of taxpayers lacked standing to challenge school district's settlement with whistleblower for failure to demonstrate it had a member who paid a tax to the district in the year before suit
  - CCP 526a standing has been liberalized, but it still has limits

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