

# Law and Elections Update

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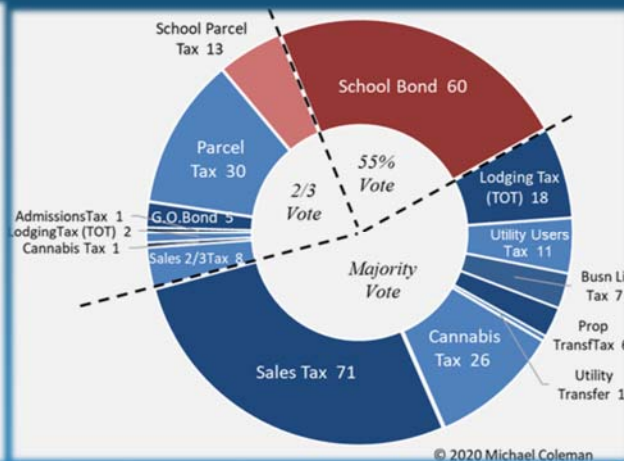
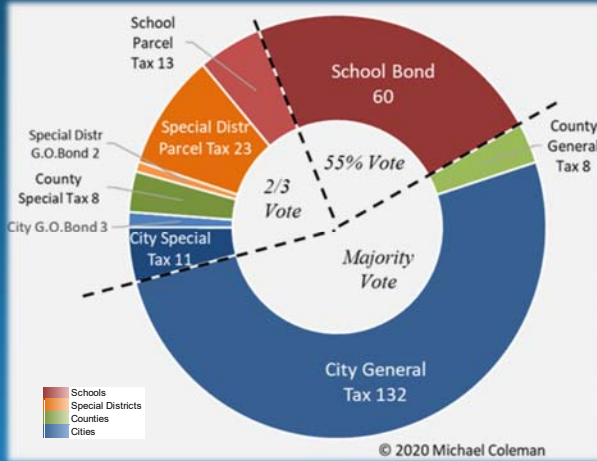
*The California Local Government Finance Almanac*



# Local Tax and Bond Measure Results



# Local Tax & Bond Measures November 2020

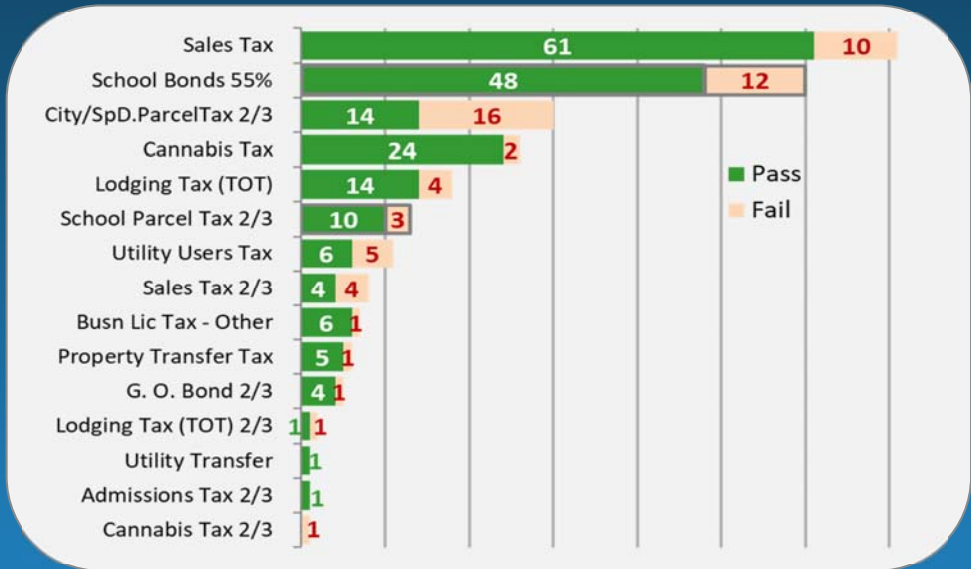


# Local Tax & Bond Measure Results November 2020

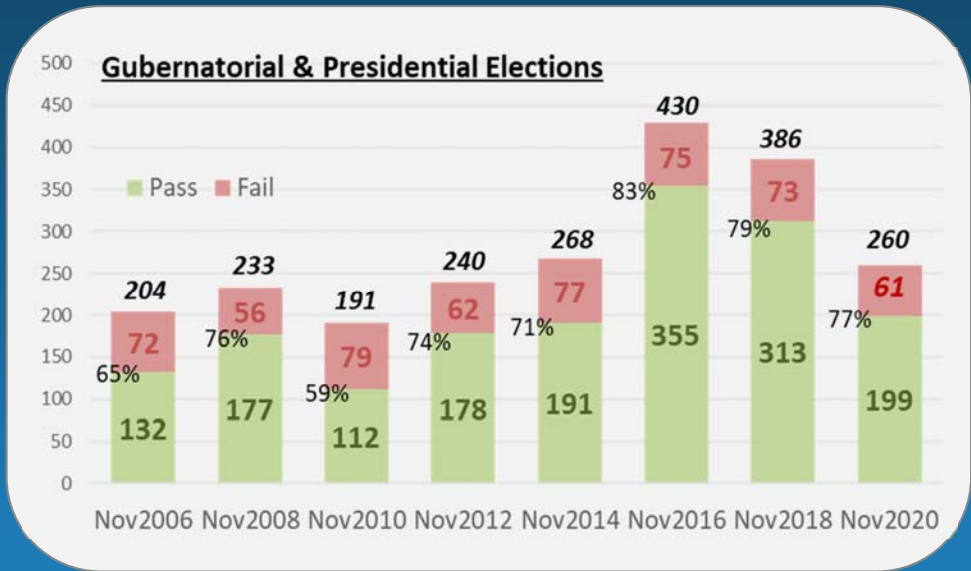


	<u>Total</u>	<u>Pass</u>	<u>Passing%</u>
City General Tax (Majority Vote)	132	109	83%
County General Tax (Majority Vote)	8	8	100%
City Special Tax or G.O.bond (2/3 Vote)	14	6	43%
County Spec. Tax, G.O.bond (2/3 Vote)	8	5	63%
Special District	25	13	52%
School Parcel Tax 2/3	13	10	77%
School Bond 55%	60	48	80%
<b>Total</b>	<b>260</b>	<b>199</b>	<b>77%</b>

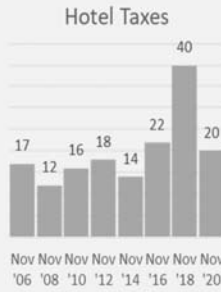
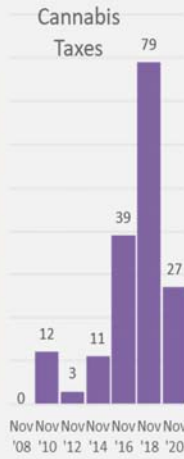
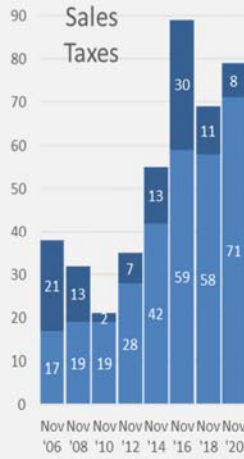
# Local Tax & Bond Measure Results November 2020



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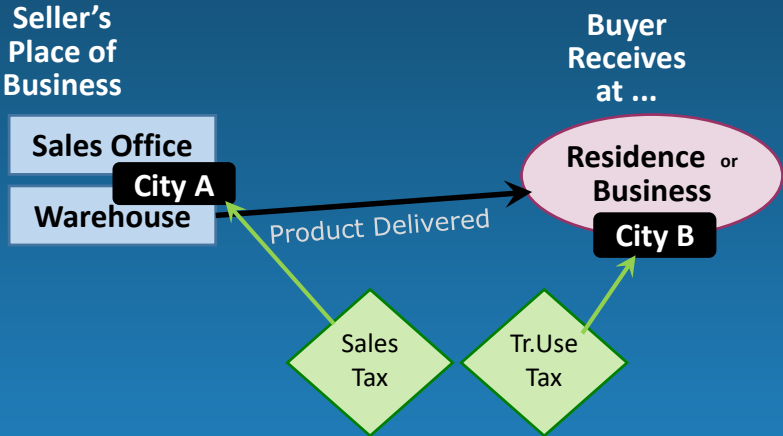


# Effects of Better Sales Tax Collection

Thanks to  
*So. Dakota v Wayfair*  
and *AB 147 (2019)*

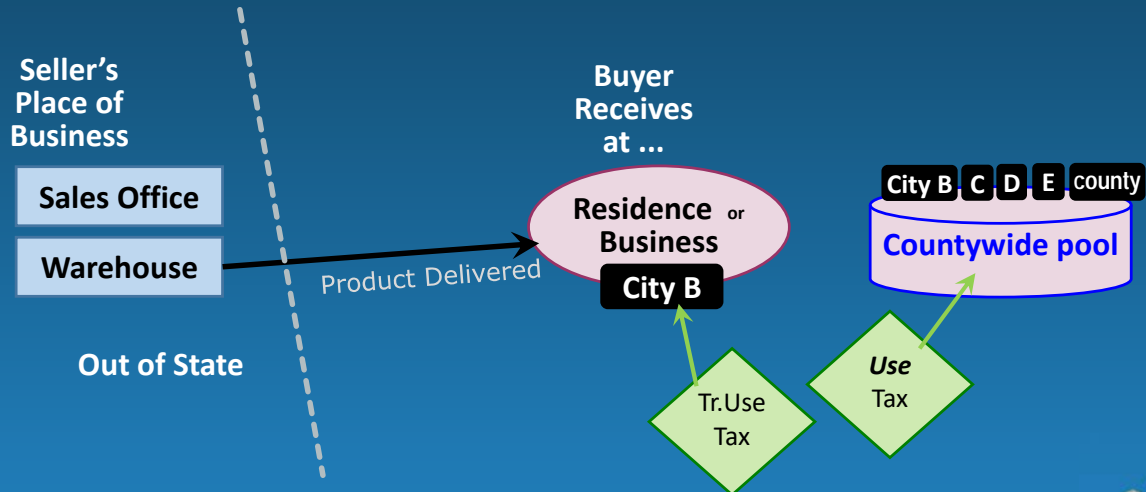


## Remote (Online) Sale Seller with *In-State* Presence



# Remote (Online) Sale

## Seller with *Out-of-State* Presence



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December 2020

## Effects of Better Sales Tax Collection



### AB147 (Burke) and South Dakota v. Wayfair

- Baked in with other collections – cannot be clearly distinguished
- Improved out of state collections – allocated through “pool” system
- Some shift to “in-state” on-line ... so sales tax goes to retailer location
- Improved collections of Transactions and Use Tax (add-on rates)
  - Allocated direct to product user/recipient location
  - Also improved collection of in-state online TUT

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\* California Department of Tax and Fee Administration

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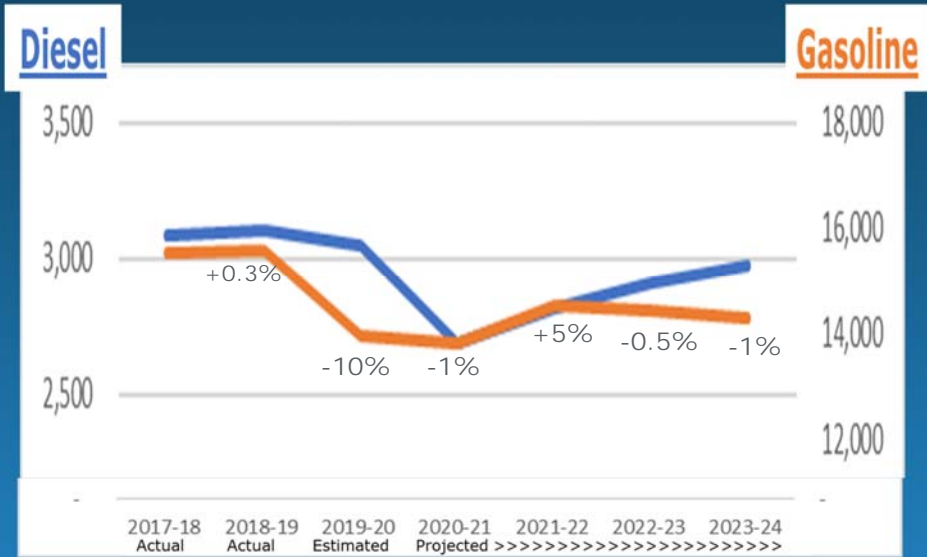
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# Fuel Consumption is Down

... but HUTA, RMRA \$ Steady...  
Thanks to SB1 (2017)



# Fuel Consumption



# Fuel and Registration Tax Increases



July 1, 2020: 6.76%

**Gasoline Excise Tax**  
47.3¢ → 50.5¢

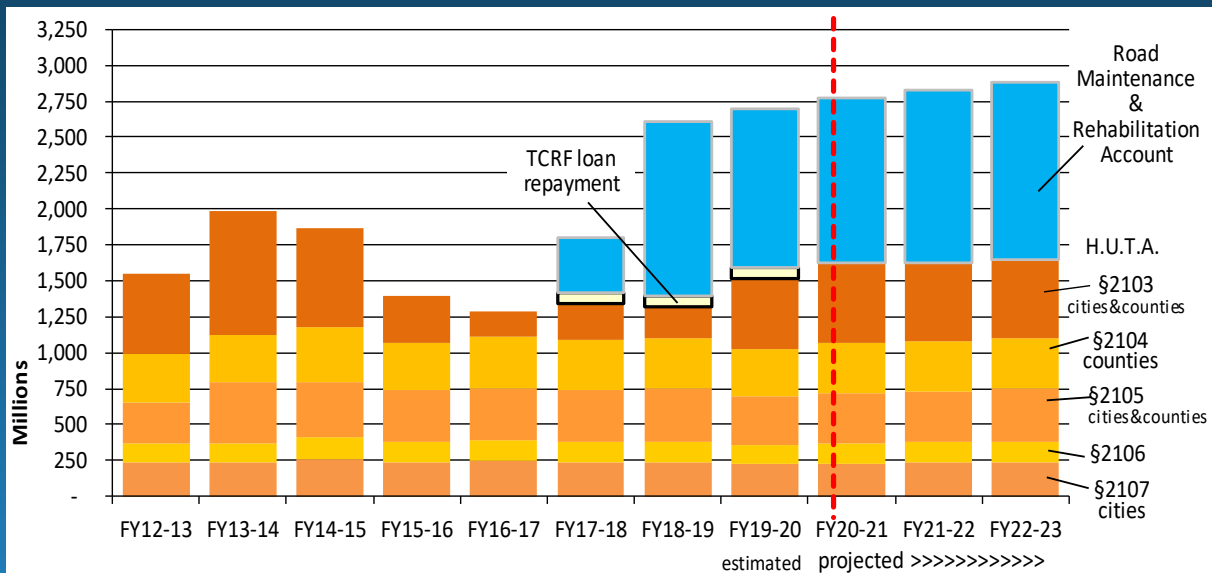
**Transportation Improvement Fee**

Vehicle Value	Jan 1, 2018	July 1, 2020
0 - \$4,999	\$ 25	\$ 27
\$5,000 - \$24,999	\$ 52	\$ 54
\$25,000 - \$34,999	\$ 105	\$ 107
\$35,000 - \$59,999	\$ 157	\$ 161
\$60,000 & over	\$ 183	\$ 188

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

**Diesel Excise Tax**  
36.0¢ → 38.5¢

# Local Streets and Roads \$ to Cities and Counties





# Update on the Law of Municipal Finance

Municipal Finance Institute  
December 11, 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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## More on *Upland*

### Other suits

- *Alameda Co. Taxpayers Assn v. County, ACSC* Nos. RG 2007 0099, RG 2007 0495
  - Validation and reverse validation cases filed 08/20 & 09/20
- *City of Fresno v. Fresno Building Healthy Communities*, 5<sup>th</sup> DCA No. F080264
  - HJTA won at trial
  - **To be argued** 12/15/20
- *Jobs & Housing Coalition v. City of Oakland* (1<sup>st</sup> DCA No. A158977)
  - City lost validation action
  - Respondent's brief not filed by deadline, case may be decided without it

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## Still More on Upland

- *HJTA v. City & County of San Francisco*, 1st DCA No. A157983
  - Challenge to Prop. C of June 2018
  - City won at trial, HJTA appealed
  - **Fully briefed** as of 10/22/20, including supplemental briefs Court requested to discuss the Prop. C case
- *City & County of San Francisco v. All Persons Interest in the Matter of Proposition G*, SFSC No. A160659
  - City won at trial
  - Appeal filed as of 8/10/20
  - **Repealed** and replaced w/ 74% approval by 11/2020's Prop. J

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## Sales & Use Taxes

- *Quill Corp. v. North Dakota* (1992) 504 U.S. 298 required physical contacts between retailer and state for sales taxes to apply
- This rule makes less sense in the internet economy and states sought to tax businesses which sell in their jurisdictions

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## Sales & Use Taxes

*South Dakota v. Wayfair* (2018) 138 S.Ct. 2080

- Abandoned *Quill's* physical-contacts requirement
- Tax jurisdiction now requires only "significant nexus" – meaning significant participation in a jurisdiction's marketplace
- So. Dakota limited duty to collect use tax to vendors w/ \$100k in receipts or 200 transactions / year

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## Sales & Use Taxes

Implications of *Wayfair*:

- Short-term: better collection of use taxes, should enhance revenues to cities, counties and the State
- Longer-term: new taxes can take advantage of the authority to tax out-of-jurisdiction vendors w/ meaningful role in local market
- Exception for small vendors advisable, legally and politically

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## Sales & Use Taxes

- AB 147 (Burke, D-LA)
  - Implements *Wayfair* by amending Bradley-Burns
  - Sets \$500k threshold for out-of-state taxpayers
  - Approved by Governor Newsom on 4/25/19
- CDTFA regulations obliged out-of-state to commence collecting sales & use taxes as of 4/1/19

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## SCAQMD Sales Tax

- SB 732 (Allen, D-Sta. Monica)
  - Proposal to allow SCAQMD to propose a Transactions and Use Taxes
  - This might compete with city and county taxes for the space under the 2% cap on all TUTs.
  - Author cancelled committee hearing on 5/13/19

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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
- 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

- AB 2570 (Stone, D-Sta. Cruz)
  - Would extend the False Claims Act to state and local sales and use taxes
  - Allows whistleblower to enforce unpaid taxes for a share of the recovery
  - Requires notice to taxing agency, which can take over the litigation
  - Support by local government associations
  - Should increase tax enforcement
  - Died in Senate Judiciary Committee 7/2/20
  - May resurface in new Legislature

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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 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
- This case argues the 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
- The State answered 11/20/20; no hearings on calendar as of 11/25/20

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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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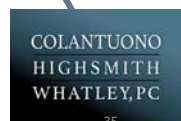
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## Property Tax

- 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% (as of 11/25/20)
    - Takes effect 2/16/21 (parent-child) and 4/1/21 (portability)
    - Conservative opponents focused on limits on parent-child transfers

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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

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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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## 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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## 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

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## 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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## Under-Collection of Bed Tax by Online Resellers

- Resellers are, arguably, subject to bed tax as sellers of hotel nights
- Hotels pay tax on wholesale rent reseller pays hotel, reseller collects tax on retail rent from customer and pockets the difference
- Class action counsel unsuccessfully pursued this for LA, SF, San Diego, Anaheim & W. Hollywood



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## Under-Collection of Bed Tax by Online Resellers

- *In re Transient Occupancy Tax Cases (San Diego v. Hotels.com)* (2016) 2 C5th 131
  - San Diego's TOT did not oblige online resellers of hotel rooms to collect and remit tax
  - LCC provided amicus brief for City
  - Likely controls in most other cities and counties because ordinance language is similar
- Divided CO S Ct reached opposite result in *Denver v. Expedia, Inc.* (Colo. 2017) 405 P.3d 1128



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## Under-Collection of Bed Tax by Online Resellers

- *City of San Antonio v. Hotels.com* (5<sup>th</sup> Cir. 2017) 876 F.3d 717
  - Applying TX law, excluded online resellers service fees from tax base
- *City of Houston v. Hotels.com* (Tx. 2011) 357 S.W.3d 706
  - Same

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## Under-Collection of Bed Tax by Online Resellers

- *In re Transient Occupancy Tax Cases: San Francisco v. Hotels.com, L.P.* (2d DCA Case No. B253197) (unpublished, 3/28/18)
  - DCA ruled for OTCs against SF, which argued:
    - OTCs were "operators" under ordinance
    - All rent paid for occupancy was taxable, even if retained by OTC
  - DCA concluded hotel need only collect tax on rent it received
- *In re Transient Occupancy Tax Cases: Los Angeles v. Hotels.com, L.P.* (2d DCA Case No. B255223)
  - DCA ruled for OTCs against LA, which appealed, arguing ordinance reference to "secondary operators" ought to change result
  - DCA ruled for OTCs in an unpublished decision, LA did not seek review

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## Under-Collection of Bed Tax by Online Resellers

- Options for Cities & Counties
  - Let the money go
  - Seek voter approval of an amended ordinance
  - Enforce your existing ordinance provisions requiring disclosure to hotel guests of taxes paid

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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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## 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

- Prop. 218 forbade general fund transfers from water, sewer & trash enterprise funds w/o cost justification.
- Sacramento, Long Beach and others obtained voter approval of such transfers as general taxes.
- Two trial courts have ruled that 2/3 voter approval is required for such taxes and the theory of these cases might undermine all UUTs.
- Both are pending on appeal:
  - *Kimball v. Long Beach*, 2d DCA Case No. B305134
    - Awaiting record on appeal as of 11/25/20
  - *Wyatt v. Sacramento*, 3<sup>rd</sup> DCA Case No. C089702
    - Argument 12/18/20

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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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## Tax Ballot Measures

- AB 809 (Obernolte, 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 (Obernolte, 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.5th 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

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## 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



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## 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
- Case is in its earliest stages in 11/20, having been stayed pending the outcome of the earlier appeal

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## 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

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## Groundwater Extraction Charges

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

- *Sloughouse 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. filed 10/2020

- 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
- *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 & 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; reply brief in appeal H046064 due 11/25/20)
  - *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 – disputing extra-record evidence as of 11/23/20, trial set for 3/5/21
  - *Coziahr v. Otay Water District*, SDSC No. 37-2015-00400000 – to be tried 12/11/20
  - *Dreher v. LA DWP*, LASC No. 19 STC CV 07272 – to be tried 05/27/21.

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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
  - Initial case management conference set for 12/3/20

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## Water Rates

*Roberts v. Coachella Valley Water Dist.*, Cal. S Ct. Case No. S264391

- One of 7 suits filed by one resident challenging various aspects of CVWD's water rates but not a rate plaintiff pays (he pays only domestic rates)
- CVWD demurred for lack of standing; trial court overruled demurrer, Court of Appeal summarily denied writ petition.
- CVWD petitioned SCOCA for review w/ local government association support
- SCOCA denied review, case continues in the trial court

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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 will provide amicus brief
- Reply brief due 12/14/20

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## Water Rates

*Chinitz v. City of Santa Cruz*, Sta Cruz Sup. Ct. Case No. 19 CV 03364

- Coalition of plaintiffs' contingency lawyers class action challenge to water, sewer, and trash rates
- To litigate extra-record evidence before proceeding to trial (the City's goal) or discovery (the plaintiff's goal)

*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
- Demurrer to third amended complaint set for 2/18/21

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## Water Rates

*Campana v. East Bay MUD*, Alameda Co Sup. Ct. Case No. RG 20 050136

- Class action challenge to tiered rates
- District has a validation defense
- Demurrer set for 12/4/20

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## Mandates & Prop. 218

*Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 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 (slide 82)

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## Solid Waste Fees

*Kahan v. City of Richmond* (2019) 35 Cal.App.5th 721

- City liened tax roll for delinquent trash fees
- Investor who purchased property sued, arguing lien was preempted by statutes governing the priority of mortgages and other liens.
- DCA concluded statute authorized the special assessment lien and that Prop. 218's assessment provisions did not apply.

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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
- Status conference set for 1/14/21 as of 11/25/20

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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* (slide 68)

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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 03/26/21
- Trial court refused extra record evidence, but changed its mind post-*Malott*; City seeking writ review as of 11/2020

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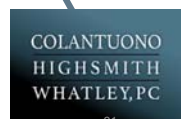
## Sewer Fees

*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
- First CMC set for 2/11/21

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## Sewer Fees

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

- Apartment owner sued small agency under Pro. 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-fat expert evidence
- 5 local government associations sought depublication or sua sponte review in SCOCA
- SCOCA extended time for sua sponte review to 2/16/21

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## Other Service Fees

*County Inmate Telephone Services Cases* (2020) 48 Cal.App.5th 354 (review denied 8/19/20)

- Counties provide telephone services to inmates via concession agreements w/ carriers that provide for substantial concession fees to the 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*
    - Grant-and-hold review in SCOCA behind *Dunsmuir*
    - Should be remanded and affirmed in due course

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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

*Northern California Water Assn. v. SWRCB* (2018) 20 Cal.App.5th 1204

- SCOCA upheld statutory fee on water rights holder to fund Water Rights Division of SWRCB
- Remanded to determine if rates were properly apportioned to benefits & burdens under Prop. 13 & *Sinclair Paint*
- Trial court ruled they were not; this decision reverses
- Favorable to rate-makers: all USBOR water benefited fee payors including environmental flows, general fund subsidy can cover uncharged beneficiaries

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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

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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
- *Jacks* tried May 2019 and trial court found franchise fee not a tax due to good-faith bargaining between City and SCE
- *Jacks* appealed as Case No. B299297
  - Fully briefed as 7/14/20

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## Franchise Fees

*Mahon v. City of San Diego* (2020) \_\_\_ Cal.App.5th \_\_\_ (2020 WL 6817061)

- 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 alleges 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 negotiation 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* (2020) 47 CA5th 73, review granted 8/12/20 as No. S262634

- 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 haulers customers was sufficient under *Jacks*
- *County Inmate Telephone Services* said was not standing case (slide 77)
- *HJTA v. Bay Area Toll Authority* (slide 87) disagreed with it
- *Mahon v. San Diego* (slide 84) distinguishes it as a demurrer case

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## Franchise Fees

*Apartment Owners Association of California v. City of Los Angeles* (LASC Case No. BC 677 423)

- Class action challenge by well-known plaintiffs' lawyers to franchise fees on commercial and multi-family haulers under Prop. 218 – summary judgment set for 1/5/21
- Similar challenges pending as
  - *Leeds v. City of Los Angeles* (LASC No. BC 709 658) – trailing lead case
  - *Betz v. City of Los Angeles*, (LASC No. BC 664 070) – no activity since 5/19

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## Other Fees for Use of Public Property

*Howard Jarvis Taxpayers Assn v. Bay Area Toll Authority* (2020) 51 CA5th435 (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* (slide 85)
- 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) \_\_\_ Cal.App.5th \_\_\_ (2020 WL 6498638)

- 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 remain a private dorm forever.

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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 1484 (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
- Prohibits funding existing service deficits
- Authorizes payment under protest
- Died in Senate Rules in 09/19
- Similar proposals can be expected in new Legislature

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## 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

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## 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

*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-payors 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* (slide 100)

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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 – in discovery as of 9/13/20)
- Burbank (settled)
- Glendale (unpublished decision 12/27/18, publication & review denied; remedy retried in 08 and 09/20)
- Long Beach challenge to voter approval in DCA (B305134) awaiting record on appeal as of 11/25/20 (see slide 36)

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## Prop. 26 Litigation

- Los Angeles (settled)
- Modesto Irrigation District (lost liability phase; to try remedy in 2021)
- Palo Alto (Won power, lost gas; remedy to be resolved in early 2021)
- Sacramento challenge to 1998 voter approval of transfer, now on appeal (C089702) – to be argued 12/18/20 (slide 36)

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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
- City answered, case moved to Riverside
- Trial hear 11/21/20; under submission as of 11/25/20

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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.4th 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 specific the issues you plan to litigate
  - *Plantier v. Ramona MWD* (2019) 7 C5th 372 had reserved this question (slide 72)
  - 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) (slide 116)
- Palm Springs CVB won and then settled



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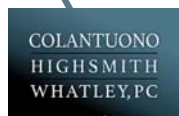
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## GHAD Assessments

*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; awaits record on appeal as of 11/25/20



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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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## 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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