

FINANCING SUSTAINABLE WATER WORKSHOP: COMPLYING WITH PROPOSITION 218

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PRESENTED BY

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Proposition 218

- California Constitution, article XIII D, section 6(b) substantive limitations:
 - Fees shall not exceed the *reasonable cost* of providing the service
 - Fees shall not exceed the *proportional cost* of providing the service *attributable to the parcel* on which it is imposed
 - Fees may not be imposed for a service that is not actually used by or *immediately available* to the owner of the property in question
 - *Burden is on the agency* to demonstrate compliance

CTA v. City of San Juan Capistrano

- Inclining block rates that go up progressively in relation to usage, ***are compatible*** with Article XIII D, § 6(b)
- City failed to demonstrate that the tiers correspond to the actual cost of providing service at a given level of usage



CTA v. City of San Juan Capistrano

- Upper tiers are not penalties
- Very narrow reading of Article X, § 2
- *Brydon v. EBMUD* is a pre-Proposition 218 case
- AWWA M1 Manual cannot be used to excuse agencies from demonstrating the cost of service

CTA v. City of San Juan Capistrano

- Potable customers may be required to pay capital costs of a recycled water system
- Recycled water is a ***new source*** of water
- Government Code § 53750(m) – water is part of a holistic distribution system



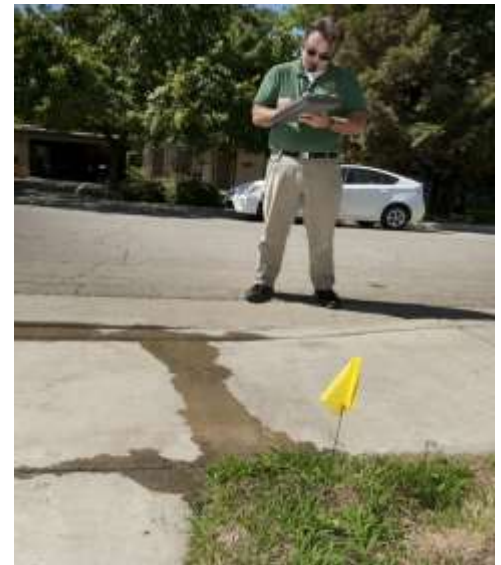
Status of the Case



- City withdrew petition for rehearing
- Requests for depublication filed by SWRCB, ACWA, League and CSAC
- Time for sua sponte review has run
- Supreme Court declined to depublish

What are the marginal costs of water?

- Sources of supply
- Development of alternative water supplies
- Water conservation and efficiency programs
- System capacity (i.e., peaking)



What other legal options are there?

- Use of unrestricted funds – e.g., *ad valorem* tax revenues, lease revenues
- Supplement your existing administrative record
- Prepare a new or update your existing rate study

What other legal options are there?

- There are at least three other court decisions that analyze the proportionality requirements of Article XIII D, § 6 differently than *San Juan Capistrano*
 - *Griffith v. Pajaro Valley Water Management Agency*
 - *Morgan v. Imperial Irrigation District*
 - *Moore v. City of Lemon Grove*

Griffith and Morgan

- Property-related fees ***do not*** need to be established ***parcel-by-parcel***
- Rate-makers may group similar users together (i.e., calculate fees on a ***class-by-class*** basis)
- “Apportionment is not a determination that lends itself to ***precise calculation***”
- Different users create ***different costs***
- Ratemaking data ***does not*** need to be perfect

Moore v. City of Lemon Grove

- Fees are ***not easily*** correlated to a specific, ascertainable cost
- Sewer rates may recover all operating costs and an agency has a “***reasonable degree of flexibility*** to apportion the costs”
- Apportionment in accordance with the City’s ***informal, best cost estimates*** is sufficient
- Expert evidence may be used to support ***or*** attack allocations of the costs of service

Questions to Ask

Does the study identify the revenue requirements for the water system and, if so, what is the basis for determining those revenue requirements?

Questions to Ask

How are the costs of service allocated – one, two, or more customer classes?

Questions to Ask

What is the basis for using the rate structure and any tiers established?

Questions to Ask

If budget based rates are proposed, how are the water budgets determined?

Conclusion

- Don't panic!
- Actively participate in the development and review of any rate study
- Do not hesitate to ask questions
- Build the entire administrative record to support the cost of service analysis

Questions?

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