

Proposition 218

1996

California Constitution Article XIII C & D

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Proposition 218

Titled the “Right to Vote on Taxes Act.”

Approved on November 5, 1996

Added Articles XIII C and D to Constitution

Proposition 218

Distinguishes between 3 financing tools:
Taxes,
Fees, and
Assessments

Proposition 218

Tax

A monetary exaction imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.

A general revenue raising device

Proposition 218

Assessment

A levy or charge on real property for a specific benefit specific benefit conferred on that property.

An Assessment is imposed only on property.

Proposition 218

Fee

To reimburse for costs related to service

Limited to expenses

Imposed for commodity use, or to mitigate impacts

May be “imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user charges for a property-related service.” (Art. XIII D, § 2 (e)).

A fee not a tax or assessment (*Crawford v. Herringer*).

Proposition 218

Art. XIII D, § 6 (b)

Property-related fee not a tax

Revenue cannot exceed funds for property-related service

Cannot exceed proportional cost

Cannot be imposed unless service actually used by or immediately available

Cannot be imposed for general governmental service

Proposition 218

Art. XIII D, § 6 (b)

Fees may include:

Direct & indirect expenses to operate

Purchased water

O&M Expenses

Repair and replacement

Capital improvements

Regulatory compliance,

To build cash reserves

Proposition 218

Art. XIII D, § 6 (b)

Fees may:

Pricing water as a tool to manage resources

Preservation of scarce resources is recognized as a legitimate cost of service and may be a factor to determine and apportion fees

MPWMD may impose rates and charges:

For services, facilities or water,

For costs supporting provision of water by others

For management of water resources

District Law §326 - Statutes of 1977, Chapter 527.

Health & Safety Code §5471

Proposition 218

Process

Record must estimate costs & basis to apportion costs

The reason for the fee

It must identify parcels on which a fee is imposed

Amount of fee for each parcel must be calculated

Written notice by mail of the fee to record owner of each identified parcel

Proposition 218

Hearing

Notice of date, time, and location of a public hearing

Consider all written protests

Cannot impose fee if a majority protest is made

“Silence equals consent”

One protest per parcel

Proposition 218

Art. XIII D, § 6 (b)

Fees for “sewer, water, and refuse collection services” are subject to the notice, hearing and majority protest procedures. Water services are not included in the voter approval requirements set by Article XIID, section 6 (c).

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Pajaro Valley Water Mgmt Agency v Amrhein (2007) 150 Cal.App.4th 1364,

Court held a groundwater extraction charge used for programs to replenish the groundwater basin to be a property-related fee subject to Proposition 218

Pajaro Valley Water Mgmt Agency v Amrhein (2007) 150 Cal.App.4th 1364,

PVWMA argued its fee to fund a program of environmental regulation was similarly a regulatory fee, and therefore not subject to Proposition 218.

PVWMA groundwater charge funded pipelines and water purchases to increase groundwater, and eliminate over-drafting the basin, and address salt water intrusion. The Court concluded the PVWMA fee was a property-related fee, like a fee for water delivery and use and NOT a fee to fund a regulatory program required by overdraft.