

California Supreme Court Holds Local Water and Sewer Rates Subject to Prop. 218

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With remarkable clarity, the California Supreme Court left no doubt that the Proposition 218 landowner notice and protest procedures must be followed whenever water, sewer and solid waste user rates are adjusted. The Court's 2004 ruling in *Richmond v. Shasta Community Services District* hinted at this result. The Court's July ruling in *Bighorn Desert View Water Agency v. Verjil* leaves nothing to the imagination:

- User rates for water, sewer and solid waste are "property related fees" under Proposition 218;
- User rates for property related fees are also subject to voter initiative to reduce previously approved fees.

Specifically at issue in the *Bighorn* case was a local ballot initiative that sought to: a) reduce the Agency's monthly water rates, and b) require the Agency to obtain voter approval before increasing any existing rates or imposing any new water rate, fee or charge.

Bighorn argued that it has the exclusive, legislatively granted authority to set rates and charges. *Bighorn* won the battle in that the Court invalidated the initiative, but only because the Court ruled the initiative process cannot be used prophylactically to tie the hands of the agency in setting future rates. Because the initiative at issue included both a rate rollback and future handcuffs on rate-setting the entire initiative was invalidated.

But *Bighorn* clearly lost the war because the Court held that Constitutional amendments enacted through Proposition 218 authorized the use of voter initiatives to modify existing rates. While reaching this conclusion, the Court made clear that monthly user rates for water, wastewater and solid waste service are "property related fees" subject to Proposition 218. Public agency utility provider must now follow the relevant constitutional and government code provisions when adjusting user rates for these services.

Interestingly, the Sixth District Court of Appeal, in *Pajaro Valley Water Management Agency v. Amrhen*, issued a contradictory opinion just two days following *Bighorn*. In *Pajaro*, the court found that a local groundwater augmentation fee – a monthly consumptive use charge – was not a "property related fee" under Proposition 218. It is likely that the Appellate Court will revise its decision in light of the Supreme Court's *Bighorn* decision.

The Court concluded that although an initiative could act to reduce or repeal local rates, fees and charges, Prop. 218 did not authorize an initiative requiring voter approval before the increase of any existing or imposition of any new rate, fee or charge.

We would be pleased to provide you with additional information about the potential impact of the Court's decision on local water and sewer rates. Please contact Brad Herrema at (805) 882-1493 or BHerrema@HatchParent.com for more information.