

Proposition 218: Implications for SLVWD's LIRA Program

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July 2020

Background

Proposition 218, an offshoot of Proposition 13, is bad public policy, particularly as it relates to local water districts. It is part of a decades-long campaign led by anti-tax, anti-government groups to curtail governmental investments into critical infrastructure and social safety net programs and to promote privatization of governmental activities. This campaign has been largely successful, as evidenced by our State's failure to invest in water delivery infrastructure as well as other critical governmental functions (e.g., the state's shrunken public health infrastructure struggling to cope with the COVID-19 epidemic). Note that Proposition 13 is notably undemocratic by granting a minority of voters (in most cases one-third plus one of all voters) to block tax increases.

After Proposition 13 was passed by voters in 1978, the state government and local governments shifted much of its revenue generation to fees. The courts did not provide a clear distinction between fees and taxes, and the anti-tax groups viewed this shift as undercutting Proposition 13 and its tax-cutting agenda -- the state and local governments were still passing taxes and just calling them fees, which are easier to enact. Proposition 218 was designed in part to strictly limit the use of fees. One of its key provisions is to require that fees must be used for the purposes specified, a common sense requirement. However, the law was poorly drafted and created uncertainty regarding its implementation in specific circumstances.

Proposition 218 and Water Rates

A California Appellate Court imposed strict requirements on water rates based on an expansive interpretation of Proposition 218's impact and scope. Many water districts, including SLVWD, had tiered rates, charging higher per gallon rates as an individual user's water usage increased. These policies were designed to promote conservation, a critical policy goal in light of California's drought cycles. Note that tiered rates do not violate the fee/tax distinction: all the fees collected are used for the operations associated with water delivery. The Appellate Court, however, in a controversial decision, determined that Proposition 218 required that the water rates needed to reflect the cost of water on an individual ratepayer basis. Thus, water districts are prohibited from charging more to promote their conservation goals unless they can show that it costs more to deliver more water to individual heavy users. The court did not provide a clear explanation of what evidence is needed to meet this requirement. As a result, most districts ended their tiered rate conservation programs.

Proposition 218 and LIRA Programs

LIRA programs provide assistance to low income ratepayers by providing a set reduction to qualifying low income ratepayers, typically \$10-\$20 per month, regardless of water usage. Because of the Court opinion described above, LIRA programs cannot be funded with revenues generated from water delivery because ratepayers would be charged differing amounts for the same amount of water delivered (i.e., LIRA program recipients would be getting discounts that others would not get). Water districts, including SLVWD, have instead used other revenue sources (e.g. property taxes, lease income, etc.) to cover their costs. There has been no legal challenge to this approach and none is anticipated.

Nevertheless, objections have been raised that although LIRA programs do not violate the restrictions of Proposition 218, they “violate its spirit” and therefore should not be widely adopted or expanded. The objections are based on the fact that if you use other revenues to fund the LIRA program, rates may have to be increased to cover the loss of these other revenues. Essentially, the objectors argue, the water district will likely have to raise rates, which amounts to taking revenue from one pocket and putting it into another as a shell game to avoid Proposition 218’s restrictions.

This argument ignores the basic functioning of governmental entities. Water delivery involves a plethora of activities not directly related to water delivery itself, for example fire management, watershed protection, and fish monitoring. LIRA programs constitute an additional, indirect but critical function -- ensuring that all ratepayers, regardless of income, have access to safe water, which the State has determined is a fundamental human right. SLVWD and other water districts have the discretion to use property taxes and other unrestricted revenues to meet this critical goal along with any other function related to its mission. Water rates continue to be imposed within Proposition 218 requirements. This is why LIRA programs are not being challenged in court.

A second response to the “spirit of Proposition 218” argument echoes the analysis in the first section of this memorandum. Proposition 218 is bad law particularly as it applies to water districts. Using a technical and strictly legal procedure to avoid its worst impacts (including making it difficult or impossible to both address the critical infrastructure needs of water districts and to protect the fundamental human right to safe water) is fully justified.

Also note that a proposed solution by those objecting to local LIRA programs -- instituting a state LIRA program instead -- has the same essential objection of “violating the spirit” of Proposition 218. A state program will also result in ratepayers having differential rates for the delivery of water because low income ratepayers will receive an indirect discount on their bills.

The bottom line is that, no matter whether water rates increase or decrease, there will inevitably be some ratepayers who lack the financial means to pay full price for this essential resource. The reality is simply that certain ratepayers urgently need relief, particularly in light of the COVID-

19 pandemic. It ultimately makes little difference where this relief originates; it's just that those most in need can't wait an unknown length of time for an undefined state program to materialize. They need the SLVWD to commit to a full-blown LIRA program of its own.