

**Update on the Law of Public Revenues**

League of California Cities  
October 6, 2016  
Long Beach, CA

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## Utility Users Taxes

- *Sipple v. City of Hayward* (2015) 225 CA4th 349
  - AT&T / New Cingular Wireless settled consumer class action in IL, agreed to refund taxes on packages w/ internet due to Internet Tax Freedom Act of 2009
  - Sued all California UUT agencies; lost on standing and claiming compliance
  - DCA reversed, S. Ct. denied review
  - Settled for partial refund

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## Utility Users Taxes

- S 431 (Thune, R-SD)
  - Freedom from Internet Tax Act
  - Makes permanent internet tax exemption
  - 50 co-sponsors
  - Pending in Senate Finance Committee
- HR 235 (Goodlatte, R-VA)
  - Same proposal
  - 191 co-sponsors (20 from CA: 12 Ds, 8 Rs)
  - Pending in Senate Finance Committee

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## Utility Users Taxes

- A.B. 1717 (Perea, D-Fresno)
  - Adopted in 2014 to provide for collection at point of sale of telephone taxes on calling cards and other prepaid services
  - Preempts local taxation authority effective 1/1/16
  - Contracts w/ BOE required as of 9/1/15; if you have not yet done so, contact BOE:  
[www.boe.ca.gov/industry/prepaid\\_mts\\_surcharge.htm##local](http://www.boe.ca.gov/industry/prepaid_mts_surcharge.htm##local)

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## Business License Taxes

- *Cal. Cannabis Coalition v. City of Upland*, CA S Ct No. S234148
  - DCA concluded Prop. 218 does not require 2/3-voter approval of tax imposed by initiative, but only taxes proposed by government
  - Follows LCC Prop. 218 Guide to limit "impose" to initial enactment of a tax or fee
  - Reply Brief pending as of 9/15/16

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## JPA Taxes

- AB 2170 (Mullin, D-So. SF)
  - GC 6502 clarifies that common powers to be exercised by a JPA "include[e] the authority to levy a fee, assessment, or tax even though one or more of the contracting agencies may be located outside this state."
  - Effective 1/1/15.

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## Property Tax

- AB 809 (Oberholte, 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 not proposed by initiative, but by Board resolution

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## Property Tax

- *Williams & Fickett v. Co. of Fresno, CA S. Ct. No. S224476*
  - DCA held usual duty to exhaust administrative remedies by seeking reassessment does not apply when assessment is a "nullity" because the taxpayer does not own it, it does not exist, or the property is tax-exempt
  - Fully briefed in S. Ct. as of August 2015

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## Property Tax

- *Dyanlyn Two v. County of Orange (2015) 234 CA4th 800*
  - Sale of fee underlying long-term lease followed by extension of lease term and sale of property to tenant and outside investor did not trigger reassessment

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## Property Tax

- *Cafferkey v. City and County of San Francisco (2015) 236 CA4th 848*
  - Assessor had authority to create tax parcels
  - Thus tax imposed on common-area parcel was valid even if not clearly shown on condo map

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## Property Tax

- *Seibold v. County of Los Angeles* (2015) 240 CA4th 674
  - Ground lease for hangar at Santa Monica Airport created taxable possessory interest
  - Whether hangar was taxable improvement was triable question of fact that could not be resolved on summary judgment

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## Property Tax

- *County of San Bernardino v. Cohen* (2015) 242 CA4th 803
  - DoF refusal to allow repayment of County loan to RDA was not reallocation of local property tax revenues in violation of Prop. 13
  - Revenues lost character as taxes when loaned
  - Akin to *City of Azusa v. Cohen* as to Prop. 218 protection of utility rates

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## Tax Increment

- SB 614 of 2014 (Wolk, D-Davis)
  - GC 56653 allows tax-increment financing of infrastructure for a disadvantaged unincorporated community (DUC) upon annexation
  - Other changes to LAFCO statute create incentives and mandates for annexations of DUCs
  - This is the first effort to help fund necessary infrastructure

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## Parcel Taxes

- *Borikas v. Alameda Unified Sch. Dist.* (2013) 214 CA4th 135
  - Statute authorizing school parcel taxes requires uniform taxation — no distinction by land use
  - Many special districts have comparable statutes
  - Related to debate re split roll under Prop. 13
  - Legislative fix died in committee

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## Parcel Taxes

- *Golden Gate Hill Dev. Co. v. County of Alameda* (2015) 242 CA4th 760
  - *Borikas*-style claim defeated by 60-day statute of limitations in validation
  - That statute applies under GC 50077.5, part of a post-Prop. 13 statute, vitiated by Prop. 62, extending special tax authority to most local governments

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## Parcel Taxes

- AB 1891 (Dababneh, D-Van Nuys)
  - Gov. Code § 50079 would require school parcel taxes that exempt low-income seniors to allow seniors to qualify for exemption once and to maintain the exemption thereafter
  - On Governor's desk as of 9/15/16

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## Parcel Taxes

- AB 2109 (Daly, D-Anaheim)
  - Effective 1/1/15, GC 12463.2 requires taxing agencies to report, and Controller to collect and report, data about parcel taxes:
    - Type & rate
    - No. of parcels taxed and exempt
    - Sunset
    - Amount & use of receipts
  - Reimbursable mandate

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## Parcel Taxes

- AB 2476 (Daly, D-Anaheim)
  - New Gov. Code, § 54930 requires mailed notice of new parcel tax before election
    - Amount or rate
    - Method, frequency, and duration of collection
    - Point of contact for additional information
  - Signed by Governor on 9/9/16

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## Documentary Transfer Tax

*926 No. Ardmore Ave. v. County of LA, S. Ct. Case No. S222329*

- “Does R&T 11911 authorize county to impose documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?”
- Fully briefed 9/4/15

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## Documentary Transfer Tax

- *City of Spokane v. Federal National Mortgage Assn.* (2015) 775 F.3d 1113
  - Federal agencies exempt from payment of local excise taxes on transfer of real property

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## Mello-Roos Special Taxes

- *Building Industry Assn. v. City of San Ramon*, 1<sup>st</sup> DCA Case No. A145575
  - BIA claims citywide CFD to fund supplemental municipal services violates Mello Roos Act because it does not provide new services
  - Summary judgment for City 4/23/15
  - To be argued 9/21/15
  - LCC provided amicus brief for City

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## Mello-Roos Special Taxes

- *Golden State Water Co. v. Casitas Municipal Water Dist.* (2015) 235 CA4th 1246
  - Reverse validation attack on bonds under Mello-Roos to acquire water utility in eminent domain
  - DCA held Mello Roos could be used in eminent domain and to acquire intangible property

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## Personal Income Taxes

- *Comptroller of the Treasury of Maryland v. Wynne* (2015) 135 S. Ct. 1787
  - County income tax that failed to credit taxpayer for taxes paid to other jurisdictions on out-of-state income violated Dormant Commerce Clause

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## Corporate Income Tax

- *Harley-Davidson v. FTB* (2015) 237 CA4th 193
  - Found Commerce Clause violation in state requirement that interstate unitary businesses use a combined reporting method while allowing intrastate business to choose separate or combined reporting
  - Found sufficient nexus to CA for taxation

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## Payroll Taxes

- *Coblentz Patch Duffy & Bass v. San Francisco* (2015) 233 CA4th 691
  - SF Initiative treating partnership distributions as taxable "payroll"
  - Not an income tax or unconstitutionally vague
  - No 218 violation in ballot materials

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## Hotel Bed Taxes

- *BHR Operations, LLC dba Crowne Plaza v. San Francisco*, 1<sup>st</sup> DCA Case No. A147368
  - Hotels unsuccessfully challenged TOT on stays under contracts with airlines, arguing these are not "transient" occupancies under SF's ordinance
  - Appeal stayed for 120 days from 7/11/16 to allow settlement discussions

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## Hotel Bed Tax

- SB 1102 (McGuire, D-Sta. Rosa)
  - Would create an alternate method of collecting TOT from Air BnB and its competitors in the sharing-economy marketplace.
  - Died in Senate Appropriations 5/27/16

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## Under-Collection of Bed Tax by Online Resellers

- Resellers are 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 issue for LA, San Diego, Anaheim & W. Hollywood

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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 guest of tax paid

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## Under-Collection of Bed Tax by Online Resellers

- *In re Transient Occupancy Tax Cases (San Diego v. Hotels.com)*, CA S. Ct. Case No. S218400
  - Does San Diego's TOT make online resellers of hotel rooms liable to collect and remit tax?
  - LCC provided amicus brief for City
  - Argument in San Diego on 9/29/16

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## Sales & Use Taxes

- S 851 (Thune, R-SD); HR 1643 (Lamar Smith, R-TX)
  - Digital Goods & Services Tax Fairness Act of 2015
  - Facilitates collection of sales taxes on internet transactions but limits collection to a single, uniform tax
  - 4 & 12 cosponsors as of 4/11/15 (none from CA), in Senate Finance & House Judiciary Committees

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## Sales & Use Taxes

- Marketplace Fairness Act, S 698 (Enzi, R-WY), HR 2775 (Chaffetz, R-UT)
  - internet retailers w/ sales >\$1m to collect sales & use taxes consistently w/ Streamlined Sales & Use Tax Agreement
  - 22 & 65 cosponsors (Feinstein & 14 other Ds; 9 CA Ds)
  - In Senate Finance and House Judiciary committees

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## Use Taxes

- *Direct Marketing Assn v. Brohl* (2015) 135 S. Ct. 1124
  - CO statute requiring retailers who make sales in CO without collecting sales tax to notify customers of CO use tax obligation and to report sales to State
  - USSC found no violation of Tax Injunction Act in entertaining suit and remanded, did not reach the Commerce Clause question

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## Transactions & Use Taxes

- *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865
  - Paying sales taxes in Napa County and holding lien on property in Calistoga did not confer taxpayer standing to challenge expenditure of special sales tax
    - Sales taxes are legally incident on seller, not buyer

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## Transactions & Use Taxes

AB 2119 (Stone, D-Sta. Cruz)

- Amends RTC 7285, 7285.5 to allow county to propose voter approval of a TUT in whole County or in unincorporated territory alone
- Can be a general or a special tax; electorate appears to be whole County
- Effective 1/1/15

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## Sales Tax-Sharing Agreements

- SB 533 (Pan, D-Sacramento)
  - Effective 1/1/16, GC 53084.5 prohibits prospectively, sales tax sharing agreements that result in net loss to local government
  - Requires proposed agreements to be posted to the web for 30 days before approval and existing agreements to be posted permanently

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## Taxpayer Actions

- CCP 126a allows taxpayers to challenge government expenditures if illegal.
- S. Ct. granted review of case to test whether plaintiffs must be property tax payers or can be renters who pay other taxes
- *Wheatherford v. San Rafael*, Case No. S219567
  - Fully briefed as of 4/21/15

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## Taxpayer Actions

- *Thompson v. Petaluma Police Dept.* (2014) 231 CA4th 101
  - Nonresident property tax payer had standing under CCP 526a
  - Challenged vehicle impoundment program did not violate due process

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## Tax Enforcement

- AB 279 (Dodd, D-Napa)
  - Effective 1/1/16, R&TC 19551.1 – 19551.2 extend FTB data-sharing to counties through 2018

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## Tax Litigation

- *AL Department of Rev. v. CSX Transp., Inc.* (2015) 135 S. Ct. 1136
  - Challenge to tax under Railroad Revitalization & Regulatory Reform Act required review of other taxes on competitors to rail transport
  - Discusses comparable Commerce Clause doctrines
  - Helpful in Commerce Clause challenges to local taxes

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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

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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

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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 provided the classes are rationally drawn

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## Groundwater Extraction Charges

*Ventura v. UWCD* (CA S Ct Case No. S226036)

- Groundwater charges subject to Prop. 26 or Prop. 218?
- Does 3:1 ratio of ag. to non-ag. rates mandated by Water Code section 75594 violate 218 or 26?
- Fully briefed 10/19/15

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## Groundwater Extraction Charges

*Great Oaks Water Co. v. Sta. Clara Valley WD* (grant & hold behind *Ventura*)

- Groundwater charges subject to Prop. 218?
- “Water” charges exempt from election requirements?
- DCA remanded substantive challenges to 10:1 ratio of ag. to non-ag. Fees
- No action on publication request

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## Groundwater Extraction Charges

- *Water Replenishment District of So. Cal. v. Cerritos* (2013) 220 CA4th 1450 (2<sup>nd</sup> DCA)
  - “Pay first, litigate later” rule applies to local government
  - Dicta suggests remedy for illegal revenue measure is not full refund, but refund of difference between lawful charge and what was paid

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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)

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## Stormwater Recapture

- AB 2403 (Rendon, D-So. Gate)
  - Codifies *Griffith v. Pajaro*
  - Amends GC 53750(m) to add "from any source" to definition of "water" in Prop. 218 Omnibus Implementation Act
  - Chaptered 6/28/14

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## Prop. 218 & Water Rates

- *City of Palmdale v. Palmdale Water District* (2011) 198 CA4th 926
  - City challenged conservation water rates, claiming Prop. 218 disallows them
  - DCA found 218 and Constitutional provision against wasting water (art. X, section 2) could be harmonized, but struck down PWD rates as insufficiently justified
  - Caution required when constructing conservation rates

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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, section 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.

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## Prop. 218 & Water Rates

- *Morgan v. Imperial Irrigation* (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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## Low-Income Rates

- AB 401 (Dodd, D-Napa)
  - Water Code section 189.5 requires SWRCB to develop a plan to fund and implement a Low-Income Water Rate Assistance Program by 1/1/18
  - Prop. 218 will not allow this to be funded by rates

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## Drinking Water Fees

- 2015's SB 83 modified SWRCB authority to impose fees on public water systems to fund State's Drinking Water Program
- SWRCB proposes to charge less to smaller systems with fewer resources
- Does Prop. 26 permit this approach?
- Adoption had been slated for 9/6/15, but no action taken; rates effective in FY 16-17.

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## Prop. 218 Legislation

- AB 2801 (Gallagher, R-Sutter Co.)
  - Amends Prop. 218 Omnibus Implementation Act GC § 53755 to require protests to be treated as public records and retained for two years
  - Earlier proposal to limit validation died in Assembly Committee
  - Governor signed into law on 8/30/16

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## Solid Waste Fees

*Torres v. City of Montebello* (2015) 234 Cal.App.4th 382

- Trial court invalidated franchise award for failure to comply with Prop. 218
- DCA found Mayor Pro Tem's signature insufficient and affirmed without reaching Prop. 218 issue

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## Solid Waste Fees

- *Crawley v. Alameda County Waste Mgmt. Auth.* (2015) 243 CA4th 396
  - Household hazardous waste fee property related even though services provided only at landfills
  - Deferred to statute declaring benefit to property
  - Deferential review of 218 notice
  - JPA could impose fees because "parent" agencies could

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## Sewer Fees

- *Moore v. City of Lemon Grove* (2015) 237 CA4th 363
  - Prop. 218 allows full cost recovery
  - Approved informal cost justification of allocation of public works department costs to sewer utility

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## Sewer Fees

- SB 1298 (Hertzberg, D-San Fernando Valley)
  - League and ACWA pursued constitutional amendment re water quality fees, low-income rates, and conservation rates
  - This picks up water quality piece
  - Seeks to overrule *HJTA v. Salinas* by statute
  - Sen. Hertzberg relented to opposition last in session, but will revisit it in the new year.

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## Prop. 218 Litigation

- *City of Azusa v. Cohen* (2015) 238 CA4th 619
  - State could prevent RDA successor agency from repaying loan from water and power utilities without offending Proposition 218
  - Court reasoned funds ceased to be utility revenues when loaned to the RDA
  - Would allow government to "lend around" all legal restrictions on use of fees; later cases likely to limit this to its post-RDA facts

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## Referenda on Fees

- Prop. 218 allows initiatives to repeal or reduce fees
- Can a fee also be referended?
  - *Monterey Peninsula Water Mgmt. Dist. v. Monterey Peninsula Taxpayers Assn* (6<sup>th</sup> DCA)
  - *HJTA v. Amador Water Agency* (3<sup>rd</sup> DCA)
  - *Ebinger v. Yorba Linda Water Dist.* (O.C. SC)
  - Shasta County Case?

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## Prop. 26 Litigation

- *Citizens for Fair REU Rates v. City of Redding*, Cal. S. Ct. No. S224779
  - 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
  - Fully briefed 7/21/15 and awaiting argument

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## Prop. 26 Litigation

- *Tyler Chapman v. City of Los Angeles et al.*, LA Superior Court Case No. BS153395;
  - Challenge to LA's general fund transfers from LA DWP under Proposition 26
  - Follows *Redding* decision
  - Dismissed under 120-day statute of PUC section 10004.5 on 4/25/16

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## Prop. 26 Litigation (cont.)

- *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 (Cont.)

- *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 water supplies

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## Regulatory Fees

- *CBIA v. SWRCB* (CA S Ct Case No. S226753)
  - Applies *Sinclair Paint* under Prop. 13 to SWRCB fees for water quality programs
  - DCA found it sufficient that fee did not exceed cost of 8 related regulatory programs; not required that each program be self-funded
  - Fully briefed 12/20/15 and awaiting argument

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## Development Impact Fees

- *Walker v. City of San Clemente* (2015) 239 CA4th 1350
  - City imposed fee for beach parking
  - Collected fee for 26 years, readopting original AB1600 reports, and did not timely spend fee
  - Court ordered \$10m refund
  - Moral: make timely, substantive reports; use it or lose it.

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## Franchise Fees

- *Jacks v. City of Santa Barbara* (CA S Ct Case No. S225589)
  - SCE agreed to increased franchise fee upon PUC authorization for line item on power bills
  - DCA found tax requiring voter approval
  - Involves distinction between legal and economic incidence of a revenue measure
  - Fully briefed 9/22/15 and awaiting argument

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## Franchise Fees

- Similar disputes in Ventura and Bakersfield
  - Ventura stayed pending decision in *Jacks*

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## Franchise Fees

- PUC Proceeding R.14-03-016
  - Cities questioned utilities' calculation of franchise fees on wheeling under local ordinances
  - In mid-2016, PUC imposed a "single methodology to calculate remittance under Municipal Surcharge Act"
  - Has large distributional effects among cities served by SDG&E and SCE

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## Franchise Fees

- Attorney General's Opinion No. 13-403 (2016)
  - County can impose PEG fee on DIVCA franchise holder without voter approval under Prop. 26
    - Not imposed by local government
    - Federal preemption
  - Did not cite exemption for fees for use of government property (13C, §1(e)(4))

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## Prop. 26

*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

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## Prop. 26 Litigation

- *Cal. Chamber of Commerce v. CARB*, 3<sup>rd</sup> DCA Case No. C075930
  - Challenges AB 32 implementation under Prop. 13
  - Court ruled for State; fully briefed 5/6/15; supp. briefs in May 2016; awaiting argument
- *Morning Star Packing Co. v. CARB*, 3<sup>rd</sup> DCA Case No. C075954
  - Related to the Chamber case; same result & status, appeals consolidated

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## Prop. 26 & State Fire Fee

- State imposed \$150 / structure fee on State Responsibility Areas
- HJTA challenged under Prop. 26 b/c not approved by 2/3 of each house
- *HJTA v. CDF*, Sacto Superior Case No. 34-2012-00133197
- Class notice completed 4/4/16

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## Assessments

- Silicon Valley Taxpayer's Ass'n v. Sta. Clara Co. Open Space Auth.* (2008) 44 Cal.4<sup>th</sup> 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 pty 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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## Utility Undergrounding Assessments

*Tiburon v. Bonander* (2009) 180 CA4th 1057

- No general benefit for utility undergrounding
- Court can look outside agency's own record
- Invalidated allocation of assessment and establishment of 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 these points
- 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

- 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
- Similar case near judgment in Mariposa Co.

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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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## PBIDs, BIDs and TMDs

- Property-based business improvement districts have engendered litigation
- AB 2618 (Pérez, D-LA) codifies *Dahms* as to PBIDs and clarifies the statute effective 1/1/15
- TMD assessments have generated litigation under Prop. 26.
  - Ontario prevailed on standing grounds;
  - San Diego mooted by amendment to limit assessment to large hotels;
  - Suit threatened in Buena Park

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## PBIDs

- 2014 Local Government Omnibus Bill contained a number of clean-ups to the PBID Statute
  - SB 1462
  - Effective 1/1/15
  - Most changes pretty minor, conform to requirements of Prop. 218 and Prop. 26

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## Assessing Other Governments

- 218 says you cannot exempt other governments and it is unclear whether that means you can assess them
- *Manteca USD v. Reclamation District 17*, San Joaquin Superior 39-2011-00273848 (5/6/14) concluded 218 does not end inter-governmental fiscal immunity
  - Not precedent

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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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## Internal Controls

- 2013's AB 1248 (Cooley, D-Rancho Cordova)
  - GC 12422.5 requires State Controller guidelines "to assist a local agency ... in establishing a system of internal controls to safeguard asset and prevent and detect financial errors and fraud"
  - [http://www.sco.ca.gov/Files-AUD/2015\\_internal\\_control\\_guidelines.pdf](http://www.sco.ca.gov/Files-AUD/2015_internal_control_guidelines.pdf)
  - Not legally binding, but may be politically so

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## Mandates

*Dept. of Finance v. Comm'n on State Mandates*, 2016 WL 4506106 (CA S Ct 8/29/16)

- NPDES mandates are imposed under federal rather than state law, and thus were not reimbursable mandates
- 4-3 decision with recent Brown appointees all dissenting

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## Bond elections

- AB 2551 (Wilk, R-Sta. Clarita)
  - Adopted EC 9401, effective 1/1/15
  - Ballot statement re bond measures must include "the best estimate from official sources of the total debt services, including principal and interest, that will be required to be repaid if all the bonds are issued and sold."

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## Debt Financing

- AB 975 (Mullin, D-So. SF)
  - Allows contractor to be paid for services under pre-7/1/15 lease-leaseback construction agreement invalidated by *Davis v. Fresno USD* (2015) 237 CA4th 261
  - Died in 2015, but the issue remains

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## Debt Financing

- Controller Chiang created Task Force on Bond Accountability
- Report Issued 1/5/16
- Available at:  
[http://www.treasurer.ca.gov/tfba/final\\_report.pdf](http://www.treasurer.ca.gov/tfba/final_report.pdf)

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## Questions?

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