Proposition 218 Update

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A. Property Related Fees and Charges

1. *City of Los Angeles v. All Persons*, Los Angeles Superior Court, Case No. BC369238, (July 2, 2009).

Article XIII D prohibits a city from transferring surplus revenue derived from water service fees to the city's General Fund, or any other fund, for expenditure on non-water related purposes.

Section 344 of the Los Angeles city charter authorizes transfers of surplus money generated from the city's water and power operations to the city's general fund. The section reads, in relevant part, "The Council may, by ordinance, direct that surplus money in the . . . Power Revenue Fund or the Water Revenue Fund be transferred to the Reserve Fund with the consent of the board in charge of the fund, but not otherwise." Pursuant to this provision, Los Angeles Department of Water and Power adopted Resolution #007-106 declaring the existence of a surplus and consenting to the transfer of $29,931,300 in the Water Revenue Fund, and the city council adopted Ordinance #178451 directing the transfer. The ordinance provided that it would be operative only if upon judicial validation.

Los Angeles brought a validation action seeking a judicial determination that its transfer of $29,931,300 of surplus money from its Department of Water and Power's Water Reserve Fund to the city's Reserve Fund was lawful. Howard Jarvis Taxpayers Association and Apartment Association of Los Angeles County answered the complaint. The matter was tried on stipulated facts as a declaratory relief action after the trial court initially determined that the transfer did was not an obligation subject to validation under CCP §§ 860 et seq. and Government Code § 53511(a). Los Angeles did not deny that the amount it charged for water service exceed the costs of providing that service, or that the planned surplus resulting from that overcharge would be transferred to the city's general fund to pay for things like police, fire, ambulance and library services. Rather the city asserted that the water service fees were not subject to Article XIII D because some customers were not property owners or tenants, such as construction companies that use fire hydrant water, and because it cannot collect delinquent accounts through a lien on property. It also asserted that even if the fees were subject to Article XIII D, the city's home rule powers under § 344 of the charter and Article XI, §§ 3, 5, and 9 of the California Constitution trumped Article XIII D's requirements. Defendants argued that Article XIII D prohibits setting rates above the cost of service for the purpose of creating a transferable surplus, and the transfer clearly violated Proposition 218.

Article XIII D, § 6 (b) establishes five substantive limitations on fees subject to its provisions. They are:

1. Fee revenues cannot exceed the funds required to provide the service (cost of service limitation);
2. Fee revenues cannot be used for any purposes other than that for which the fee is imposed (use limitation);
3. The amount of the fee imposed on a parcel or person as an incident of property ownership cannot exceed the proportional cost of service attributable to the parcel (proportionality limitation);
4. Fees may be imposed only for service actually used by, or immediately available to, the owner of the property (service limitation);
5. Fees may not be imposed for general governmental services where the service is available to the public at large in substantially the same manner as it is to property owners (general purpose limitation).

In this case, the court found the transfer violated the cost of service and use limitations. The court also held that the city had the burden of proof under Article XIII D, § 6 (b)(5), but had failed to show that any portion of the transferred funds related to the production or provision of water or water-related services. The court rejected the city's argument that the fee was not property-related because some customers were not property owners or tenants. The court found that it must look to the "character of the *primary* revenue source: property owners and tenants," not to a minuscule portion of LADWP's water revenue. According to the court, if it looked to the exceptions rather than the rule, "a municipality could avoid the Constitutional transfer restrictions by selling a few bottles of water to merchants." The court rejected the city's argument that enforcement by lien is required for a fee to be subject to Proposition 218, relying on *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, 1393 (enforcement through a lien tends to support the determination that a fee is imposed as an incident of property ownership, but lack of that enforcement mechanism is not determinative). Finally, the court flatly rejected the city's home rule argument citing *Johnson v. Bradley* (1992) 4 Cal. 4th 389, 403 (a charter city remains subject to the guarantees and requirements of the state and federal Constitutions).

The judgment against the city provides,

> "Thus, the City may not collect, either for retention or transfer, rates for water and water-related services that are designed to generate a surplus (*i.e.*, 'revenues [that] exceed the funds required to provide [water and water-related] service' to its customers) after servicing all debts and paying all expenses related to the production and provision of water and water-related services for its customers and setting aside reasonable reserves (including reserves for water- and water service-related capital projects and contingencies) as outlined in *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal. App. 4th 637, *Howard Jarvis Taxpayers Assn. c. City of Fresno* (2005) 127 Cal. App. 4th 914, and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 209."

This decision confirms that cost of service is the ceiling for property-related fees. Cost of service is also the floor for agencies that rely on fee revenue to support their operations. Interagency payments, such as charges for administrative overhead by cities and districts that provide multiple services, must be justified based on costs of service actually provided to the enterprise supported by the fee generating the revenue to make the payment, not on theories such as "in-lieu franchise fees" (rejected in *Roseville*) or "fees in-lieu of taxes" (rejected in *Fresno*). Further, although water to run the enterprise itself is a cost of service that may be passed on to customers, a city cannot expect to obtain free water for its general municipal services such as parks and libraries.

2. *Paland v. Brooktrails Township CSD* (July 31, 2009) 1st App. Dist. Case No. A122630, 2009 Cal. App. LEXIS 1272.

Base service fee for water provided through an existing connection is a property-related fee, not a standby charge (assessment). The cost of providing service includes capital as well as operating expenses.

Brooktrails Township CSD was established to provide water and sewer service to approximately 6,500 parcels of land near Willits. Slightly more than 1,500 of the parcels are connected to the water system, and a slightly less than that number connected to the sewer system. The district generates revenue through standby charges, pursuant to Government Code § 61124 and by reference the Uniform Standby Charge Procedures Act [Gov't Code §§ 54984 et seq.], connection fees, and monthly rates. The monthly rates include a base rate and, for water service, an inclining usage-based rate. Rate revenue is used to pay a portion of the district's capital, operation, and maintenance expenses. Paland fell behind on his monthly bills, resulting in the district shutting off service and locking his meter. The district refused to unlock the meter unless Paland paid all delinquent charges, but continued to assess the base rate for water and sewer services. After Paland brought his bill current, the district reinstituted service. Thereafter the monthly bills showed no actual water use on the property, but the district continued to charge the base monthly rate for water and sewer. Paland sued the district for declaratory and injunctive relief alleging the base monthly rates for the periods when his water service was turned off were "standby charges" that had not been approved pursuant to Article XIII D, § 4 (procedural and substantive requirements for levy of special assessments).

Article XIII D, § 6 (b)(4) prohibits property-related fees for service "unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4." Proposition 218 does not define "standby charges."

Keller v. Chowchilla Water Dist. (2000) 80 Cal. App. 4th 1006, 1011.[1] Paland contended that service is not immediately available when the meter is locked in the closed position, even though it could be reopened at any time upon payment of delinquent bills. In Paland's view, the district could charge him for water only if "he can 'twist his tap and turn on water." The court rejected Paland's narrow view, stating,

> "We conclude the 'immediately available' requirement is logically focused on the agency's conduct, not the property owner's. As long as the agency has provided the necessary service connections at the charged parcel and it is only the unilateral act of the property owner (either in requesting termination of service or failing to pay for service) that causes services not to be actually used, the service is "immediately available" and a charge for the service is a fee rather than an assessment (assuming the other substantive requirements of a fee are satisfied)."

The court also rejected Paland's arguments that operation and maintenance costs could be paid only by assessments, and that once he had paid his connection charge he was exempt from further charges for operation and maintenance unless he further burdens the system by actual use. Stating the obvious, the court said, "Common sense dictates that continuous maintenance and operation of the water and sewer systems is necessary to keep those systems immediately available to inactive connections like Paland's."

The case also contains brief discussion of the application of the 120 day limitations period of Government Code § 66022(a) to rate challenges. The trial court had dismissed a previous challenge based on this provision, and had limited the scope of the challenge in the amended complaint to the fees imposed by the resolution adopted within 120 days of the filing. Because of it ruling that the fee was valid, the court of appeal did not decide the procedural question.

This case confirms the practice of many agencies. Enterprise operations are frequently funded from a variety of revenue sources, including capacity charges, connection charges, standby charges, investment earnings, some tax revenues if the agency has preexisting tax authority, as well as rate revenue. The amount of

[1] As the court in *Keller* observed, the term also does not appear to be defined in any of the various statutes authorizing imposition of standby charges (sometimes called availability charges). The standby charge evaluated in the *Keller* case was imposed on all property capable of receiving water from the District, thus even property owners who did not and had not used district water were required to pay for the cost of water purchases made by the district . *Keller v. Chowchilla Water Dist.*, 80 Cal. App. 4th 1006, 1009. Government Code § 61124, which authorizes community services districts to levy standby charges for water, sewer, or water and sewer services, contains typical language authorizing the charges on parcels, "to which water or sewers are made available for any purpose of the district, whether the water or sewers are actually used or not." (See also, Gov't Code § 54984.2, similar language.) Water Code § 389 says that "water standby charge" and "water availability charge" have the same meaning. The court in *Kennedy v. City of Ukiah* (1977) 69 Cal. App. 3d 545, 553, used this definition, "Standby and availability charges are fees exacted for the benefit which accrues to property by virtue of having water available to it, even though the water might not actually be used at the present time."

revenue requirement that is satisfied by rates is determined by taking total costs of the enterprise operation (operating and maintenance expenses, debt service, pay-as-you-go capital, changes in reserves, etc.), deducting the revenue expected to the generated by other sources such as investment income, taxes, standby charges, and capacity charges, then spreading the rest of the revenue over the amount of service or volume of commodity expected to be sold for the relevant rate period. In order to ensure sufficient revenues and smooth rate ramps (either up or down), agencies rely on "fixed" revenues such as base charges to support core activities.

3. *North San Joaquin Water Conservation District v. Howard Jarvis Taxpayers Assoc.* Pending in Third Appellate District, Case No. C059758

Great Oaks Water Co. v. Santa Clara Valley Water District, Santa Clara County Superior Court, Case No. 1-05-CV053142, (appeal expected)

These cases involve charges imposed in connection with the management, replenishment, and use of groundwater and groundwater basins. These charges are generally levied on persons operating wells for the extraction of groundwater and the revenue is used to fund construction, operation, and maintenance of recharge facilities, as well as for the purchase of water. Recharge may be direct through injection facilities or spreading basins, or indirect through deliveries of imported water to customers in-lieu of water that would otherwise be pumped from the groundwater basin. The fees may also be used to fund groundwater management, including water quality remediation and saltwater intrusion barriers.

In *Pajaro Valley Water Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, groundwater pumping charges imposed on all pumpers within the district, including small domestic users, were found to be property-related fees subject to Article XIII D, not assessments on property or taxes, or regulatory fees exempt from Proposition 218 under *Apartment Owners Assn. of Los Angeles County v. City of Los Angeles*.

Great Oaks Water Co. v. Santa Clara Valley Water District involves a challenge to a groundwater extraction fee paid by a water utility for commercial extraction of water that is then resold to the utility's water customers. One question presented is whether the extraction fee imposed on the commercial water utility is a property-related fee subject to the requirements of Article XIII D. Another question, if it is a property-related fee, is whether the fee is subject to the exemption from the election requirement of Article XIII D, § 6(c) as a fee for "sewer, water or refuse collection services". *North San Joaquin Water Conservation District. v. Howard Jarvis Taxpayers Assoc.* also involves the question whether a groundwater extraction fee is subject to the election requirement. Both cases also involve challenges to the fees based on the proportionality limitation of Article XIII D, § 6(b)(3). The districts' enabling acts requires that groundwater charges be established at different rates for agricultural

water and non-agricultural water, without regard to any cost of service differences. [Water Code § 75594 (water conservation districts); Santa Clara Valley Water District Act § 26.9 (a)(3)(D); West's Cal. Wat. Code Appendix § 60-26.9 (a)(3)(D).]

Article XIII D, § 6 (c) provides,

> "Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted to and approved by a majority vote of property owners of the property subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area."

In *North San Joaquin*, the trial court determined that services funded by the ground water pumping charge were within the scope of "water, sewer, or refuse collection services." In *Great Oaks Water Co.* the trial court found they were not. ACWA has authorized participation in an amicus brief supporting the position that groundwater extraction fees are exempt from the election requirement.

The only prior appellate case construing the scope of section 6(b)(3) is *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal. App. 4th 1351. That case involved a storm water drainage fee imposed on owners and occupants of developed lots in the city to pay for the cost of the storm drain system. The court found that storm water management was not a "water, sewer, or refuse collection service." Having concluded "that the storm drainage fee 'burden[s] landowners as *landowners*," the court of appeal in *Salinas* next concluded that no exemption from the voter approval requirement applied. The City had argued, and the trial court had found, that the storm drainage fee was for water and sewer services and, thus, was within the exemption of subdiv. (c) of Article XIIID, § 6 for fees "for sewer, water and refuse collection services." "Sewer" is an undefined term in Article XIII D and is also not defined by the Proposition 218 Omnibus Implementation Act. [Gov't Code §§ 53750 et seq.] The City argued that the court should apply dictionary and other definitions of sewer that include both sanitary and storm water facilities within the term. The HJTA relied on the 1998 Attorney General's opinion that concluded that because flood control and drainage facilities were distinguished from sewer facilities in the Proposition 218 exemption provisions relating to assessments (Article XIII D, § 5, subdiv. (a)), that they should also be distinguished from sewer facilities for the purposes of the vote exemption for property related fees (Article XIII D, § 6, subdiv. (c)), even though the language of the exemptions is different. [81 Ops. Cal. Atty. Gen. 104 (1998).] The court rejected both arguments. Instead, it said, "The popular, nontechnical sense of sewer service, particularly when placed next to 'water' and 'refuse collection' services, suggests the service familiar to most households and businesses, the sanitary sewerage system." Concluding that use of the term

"sewer" is ambiguous in Proposition 218 and relying on its previous determination that its provisions must be construed liberally to curb the rise of fees (citing the uncodified Section 5 of Proposition 218), the court resorted to the principle that exceptions to a general rule must be strictly construed and concluded that sewer services should have the "narrower, more common meaning applicable to sanitary sewerage.

Relying on the court's discussion of water and sewer service in *Salinas*, HJTA and Great Oaks take the position that water service is narrowly limited to only those activities associated with delivery of water directly to consumers. *Salinas* stands for the proposition that storm water management and flood control are generally not provision of sewer or water service, it does not stand for the proposition that a fee imposed on the extraction of groundwater from a basin and used to purchase water and provide facilities necessary to refill the basin is not provision of water or water service. In its only discussion of water, the *Salinas* court wrote:

> "For similar reasons we cannot subscribe to the City's suggestion that the storm drainage fee is "for . . . water services." Government Code section 53750, enacted to explain some of the terms used in articles XIII C and XIII D, defines " '[w]ater' " as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water." (Gov. Code, § 53750, subd. (m).) The average voter would envision "water service" as the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants, carries it away, and discharges it into the nearby creeks, river, and ocean." *Id.* at 1358.

Groundwater management generally involves all of the activities necessary to put water into groundwater basins where it is stored for later consumption. Although the extraction of the water may be done by others, without "water service" provided the groundwater replenishment and management activities funded by the groundwater extraction charge, there would be no water to extract and consume. Similarly, the *Pajaro* case held that the groundwater extraction charges at issue in that case were subject to Prop. 218 because the water provided to the wells of rural domestic users was not meaningfully different from the water provided via pipes to urban users and that both such services required compliance with the protest hearing procedures of Article XIII D, § 6(a). This reasoning suggests that efforts to supply water to wells by maintaining functioning groundwater basins ought to be a "water" service subject to the protest hearing requirement of § 6(a) and exempt from the election requirement of § 6(c).

4. *Greene v. Marin County Flood Control and Water Conservation Dist.,* Cal. Sup. Ct. Case No. S172199

This case involves a property-related storm drainage fee imposed to partially fund a flood protection plan. The flood protection plan and fee were developed after months of collaboration among local government agencies and community organizations, and the fee was approved by a majority of landowners though a mail-ballot "special election." The special election was held pursuant to procedures adopted by the district's board as authorized by Article XIII D, § 6(c), which authorizes an agency to "adopt procedures similar to those for increases in assessments in conduct of elections under this subdivision." Because the district chose to submit the fee to approval by a majority of landowners, the procedures contained provisions for property and owner identification, as well as signatures, on the ballots. The trial court upheld the election, but the court of appeal reversed, setting aside the election results "because the voters' names were printed on the ballots and ballots had to be signed, yet voters were provided no assurances that their votes would be kept secret." The Supreme Court granted review.

The issues presented in the petition upon which review as granted are:

1. Does the voting secrecy requirement of California Constitution, article II, §7 apply to property-owner "voting" on a property-related fee pursuant to article XIII D, § 9(c)?

2. Does the voting secrecy requirement of California Constitution, article II, § 7 apply to property-owner "ballots" on assessments subject to article XIII D, § 4 notwithstanding the contrary direction of subdivision (d) of that § 4 and of Government Code § 53753?

3. If voting secrecy applies in these contexts, must local governments affirmatively inform property owners ballot secrecy will be maintained?

4. May a court overturn property owners' election to approve an assessment or property-related fee because a local government failed to inform property owners that ballot secrecy would be maintained or because a lapse in ballot secrecy occurred?"

The ACWA, CSAC, CSDA, and League of Cities have authorized a joint amicus brief on behalf of the district. If the requirement for secret ballots applies to property owner approval of fees and assessments, weighted or fractional voting becomes particularly problematic.

5. Government Code § 53756 [Stats. 2008, c. 611 (A.B. 3030)]

Automatic inflationary increases and pass-through of wholesale water charges.

This section specifically authorizes the agencies providing water, sewer, or refuse collection services to adopt automatic rate adjustments for inflation or to pass-through increases in wholesale water charges. The automatic increases are good for up to five years; compliance with Article XIII D, § 6 is required for future changes to the schedule. Notice of automatic increases must be given in 30 days in advance, and may be included in regular billing statements. Inflation adjustments may not result in a charge that exceeds the costs of service.

6. Water Code §§ 370 – 374 [Stats. 2008, c. 610 (A.B. 2882)]

Allocation-based Conservation Water Pricing

This bill establishes an alternative method of establishing a conservation based price structure for water service. Under the bill, an "allocation-based conservation water pricing" structure is comprised of a "basic charge" and a "conservation charge." The basic charge is a volumetric charge for the cost of water service, other than fixed costs recovered through the type of charge described in the *Paland* case, and other than the costs recovered by the conservation charge. The conservation charge is a volumetric charge to recover the "incremental costs" of service for use of water in excess of the basic use allocation and for other conservation or demand management programs. The statute requires establishment of a basic use allocation for each customer account based on consumer needs and property characteristics. The Irvine Ranch Water District and Santa Ana Watershed Project Authority were the co-sources of the bill. Many believed the bill was unnecessary because pre-existing law permitted agencies to develop pricing structures that deter waste and encourage efficiency. (E.g., *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal. App. 4th 1364, 1390.)

B. Assessments

1. *Dahms v. City of Pomona* (2009) 172 Cal. App. 4th 1201

This case involves an assessment district formed to provide enhanced security, streetscape maintenance (e.g., street sweeping, gutter cleaning, graffiti removal), and marketing, promotion, and special events for business improvement in a commercial area. These services are provided only to the properties within the district, and exceeded the services that would be otherwise be provided by the city. The engineer's report concluded and the court found that these services "affect the assessed property in a way that is particular and distinct from [their] effect on other parcels and that real property in general and the public at large do not share." The opinion was the result of reconsideration after remand in light of *Silicon Valley Taxpayers Assn v. Santa Clara County Open Space Authority* (2008) 44 Cal. 4th 431.

The engineer's report based the amount of the assessment for each assessed property within the district on three factors: street frontage, building size,

and lot size. Those factors account for 40 percent, 40 percent, and 20 percent, respectively, of the amount assessed for each property. The City determined the amount of the assessment by first identifying the special benefits as the enhanced services, separating the special benefits from general benefits, and identifying the estimated costs of the special benefits. The City then calculated the assessment for each assessed property as a portion of the total cost of the services by applying the three factors. The City heavily discounted the assessment for various nonprofit entities ("religious organizations, clubs, lodges and fraternal organizations") within the boundaries of the district, and totally exempted from assessment properties zoned solely for residential use.

Dahms challenged the assessment arguing: (1) that the city council held the hearing on the proposed assessment too early, in violation of article XIII D, because the hearing took place on the 45th day after the City mailed notices of the proposed assessment, (2) the discounts to certain properties violated the requirement that assessments be proportional to special benefits, (3) the city failed to properly separate general from special benefit, and (4) that the special benefit was not properly apportioned. After exercising its independent judgment as required by *Silicon Valley*, the Court of Appeal upheld the assessment.

The court rejected the first argument applying the standard rule of CCP § 12 that "[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." It also concluded that nothing in article XIII D prohibits discounted assessments or required that any discounts be uniformly granted across all parcels in an assessment district.

The assessment on a particular parcel cannot exceed the reasonable cost of the proportional special benefit conferred on that parcel, but if the assessments imposed on some parcels are discounted, article XIII D is not violated so long as those discounts do not cause the assessments imposed on the remaining parcels to exceed the reasonable cost of the proportional special benefit conferred on those parcels. There was no showing that the assessments on some parcels went up because of the discounts, and Dahms does not argue that they did.

Dahms argued that if the special benefits that are conferred also produce general benefits, then the value of those general benefits must be deducted from the reasonable cost of providing the special benefits before the assessments are calculated. The court rejected this theory concluding that once general and special benefits are separated, the entire cost of the special benefit is subject to assessment. The court also rejected Dahms' challenge to the front footage component of the assessment spread formula. Dahms argued that total length of streets on all sides of a parcel should be used rather than front footage. The court found that it made sense to use front footage only rather than total street length to determine the proportional special benefit from the services provided because, for example, a clean and safe front entrance to a commercial parcel is more likely to

constitute a special benefit to that parcel than a clean and safe side or rear, where there may or may not be any entrance at all. At the same time, the formula took into account building size and lot size of each assessed parcel, which the engineer's report and court found, when taken together, provided for an assessment that did not exceed special benefit.

2. *Bonander v. Town of Tiburon* (2009) 46 Cal. 4th 646.

This case involved the interpretation of two internally inconsistent provisions of the Municipal Improvement Act of 1913 relating to the filing of actions. The upshot of the case is that the Supreme Court reversed the Court of Appeal and concluded that that under Sts. & Hwy. Code § 10601 validation actions involving such assessments can be brought only by the legislative body that approved the assessment or the contractor that would perform the work, while property owner actions to contest assessments are governed solely by Sts. & Hy. Code, § 10400, and consequently are not subject to the general validation procedure, but must be filed within 30 days after the assessment is levied.

3. SB 321 (Benoit)

Assessment majority protest ballots.

This bill, sponsored by the Howard Jarvis Taxpayers Association, is intended to provide greater transparency to the majority protest ballot process for special assessments. As presently drafted, the bill would amend Government Code § 53753 as follows:

- Subdivision (b) is amended to add a requirement that the envelope containing the assessment ballot state on the outside "OFFICIAL BALLOT ENCLOSED" in no less than 16 point type. (The quoted language is in 16 point type, Times New Roman font.) The agency may additionally place the statement on the envelope in a language or languages other than English.
- Subdivision (e)(1) is amended to provide that the impartial person designated by the agency to tabulate the assessment ballots may include the clerk of the agency. It is also amended to provide that ballots shall be unsealed and tabulated "in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process" if the tabulation is done by agency personnel or vendors that participated in research, design, engineering, public education, or promotion of the assessment.
- Subdivision (e)(2) is amended to provide that assessment ballots and information used to determine the weight of each ballot shall be treated as disclosable public records during and after tabulation, equally accessible to assessment proponents and opponents. The subdivision is also amended to require that the ballots be kept a minimum of two years.

C. Taxes

1. *Ardon v. Los Angeles* (2009) 174 Cal. App. 4th 369

Tax refunds claims must be filed for each person seeking a refund, no class action claims.

This case involved a challenge to a utility users tax. Plaintiffs sought to bring the case as a class action. The Court of Appeal affirmed the order striking the class action allegations holding that the Government Claims Act claim filing requirements do no authorize such claims. The court found that Government Code § 910 does not expressly allow a class action claim, but does contain language referring to a singular claimant. The court concluded that case law allowing substantial compliance with claims statutes (*City of San Jose v. Superior Court* (1974) 12 Cal. 3d 447) does not extend to tax refund claims because of the express requirement under article XIII, § 32 of the California Constitution that tax refund claims must be brought in the manner prescribed by the Legislature. The court further stated *County of Los Angeles v. Superior Court (Oronoz)* (2008) 159 Cal. App. 4th 353, by the same division of this district court of appeal, which had allowed class claims, was incorrectly decided. A petition for review of this case is pending.