

*Harmonizing Proposition 218,
Recent Court Decisions, and
Conservation Rates*

California State Water Resources
Control Board workshop

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Panel Members

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Prop. 218 & Water Rates

- *Capistrano Taxpayers Assn v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493
[depublication request pending]
- 4 claims in trial court:
 - Groundwater project was waste
 - “Phantom bond”
 - Funding new purple pipe service from domestic rates
 - Cost justification of tiers

The Holding

- Only recycled water and tiered rates raised on appeal
 - Domestic rate can fund new recycled system b/c definition of “water service” is broad
 - Precise cost justification required for tiered rates
 - Rejects fines arguments
 - Doesn’t discuss argument that upper tiers are not subject to Prop. 218

Court's Rationale

- Very narrow reading of Article X, § 2
- Much consternation at state & local levels
- Case developments continue; stay tuned
 - City withdrew rehearing petition
 - Requests for depublication pending in California Supreme Court

What happens next?

- City Council voted to withdraw petition for rehearing
- Requests for depublication filed by SWRCB and local government associations
- Time for sua sponte has run, but depublication requests remain pending

Options if *San Juan* is the law

- Use flat rates and fines
- Carefully cost-justify tiers
- 2/3-voter approval as a tax
- IOUs can impose tiered rates

Water Rate Litigation

- *Pre-San Juan:*
 - Glendale
 - Sweetwater Authority
 - San Jose
- *Post-San Juan*
 - Coming soon to a town near you!

Legislative Fix?

- Possible Constitutional Amendment
- Statutory fix to Government Claims Act to eliminate class action suits
- Statutory affirmation that tiered rates can comply with Prop. 218

What the Court Got Wrong

- Court's analysis of California Constitution article X, section 2
- Court's analysis of *Brydon v. East Bay Municipal Utility District*
- Court's analysis of proportionality

Options for Justifying Tiers

- What are the marginal costs of water to justify tiers?
 - Sources of supply
 - Development of alternative supplies
 - Water conservation and efficiency programs
 - Peaking
 - Avoided costs

Other Options

- Use of unrestricted funds
- Supplement an existing administrative record to justify existing tiered rates
- Prepare a new or update an existing rate study

Other Options

- There are at least three other court decisions that analyze the proportionality requirements of Prop. 218 differently than *San Juan Capistrano*
 - *Griffith v. Pajaro Valley Water Management Agency*
 - *Morgan v. Imperial Irrigation District*
 - *Moore v. City of Lemon Grove*

Griffith

- Water service means more than just supplying water; it means ensuring an **ongoing supply** of water
- Charges did not exceed the proportionate cost of providing service because **all groundwater users benefit** from the Agency's groundwater management activities, not just the coastal well users

Griffith

- Property-related fees **need not** be established **parcel by parcel**
- Rate-makers may group similar users together (i.e., calculating fees on a **class by class**)
- “Apportionment is not a determination that lends itself to **precise calculation**”

Morgan

- Ratemaking by customer class **is consistent** with the proportionality requirement of Article XIII D, § 6(b)
- Different users create **different costs**
- Ratemaking data **does not** need to be perfect

Moore

- Fees are not easily correlated to a specific, ascertainable cost
- Apportionment in accordance with the City's best cost estimates is sufficient
- City presented evidence of informal methods used to apportion costs
- City satisfied its burden to prove compliance with Article XIII D

Unanswered Questions

- Why is it appropriate to allocate more costs of constructing a recycled water project to those who use more water, but it isn't appropriate to charge more to those who place greater demands on a water system and water supplies?

Unanswered Questions

- Are budget-based rates viable if budgets may not be used to establish tiers?
- What legislative discretion remains for rate-makers?
- If the *San Juan case* is **not** depublished, will trial courts follow it or *Griffith, Morgan, and Moore*?

Questions?