

## M E M O

TO: Board of Directors

FROM: District Manager

SUBJECT: Procedures for Proposition 218 Property Related Fees and Charges

DATE: February 12, 2007

### **RECOMMENDATION:**

It is recommended that the Board of Directors review this memo and approve the attached resolution relative to the establishment of procedures for Proposition 218 Property Related Fees and Charges.

### **BACKGROUND:**

In November 1996 a California Constitutional Amendment known as Proposition 218 was passed by the voters. Proposition 218 known as the "Right to Vote on Taxes Act" added two (2) new articles to the California Constitution: Article XIIC, Voter Approval for Local Tax Levies; and Article XIID, Assessment and Property Related Fee Reform. See Attachment 1.

The Bighorn-Desert View Water Agency v. Verjil decision by the California Supreme Court in late July 2006 has implications for the District relative to water rates. The court concluded that water delivery charges, whether calculated on a consumption basis or a fixed rate are subject to Proposition 218. All the rules under Proposition 218 apply to water rates, including notices, majority protest proceedings, and the use of rate revenue. Previously water rates were considered exempt from the requirements of Proposition 218. District Counsel Hynes provided your board with information regarding the Bighorn-Desert View Water Agency decision in a memorandum dated August 30, 2006. See Attachment 2.

Staff has drafted procedures and requirements relative to Proposition 218 user fees to provide the District with a guide for implementation of new water rates and other property related fees and charges.

It is recommended that the Board of Directors review this memo and approve the attached resolution relative to the establishment of procedures for Proposition 218 Property Related Fees and Charges.

---

James A. Mueller  
District Manager

JAM/bsb

SAN LORENZO VALLEY WATER DISTRICT

RESOLUTION NO. (06-07)

SUBJECT: ADOPTION OF PROCEDURES FOR PROPOSITION 218 PROPERTY RELATED FEES AND CHARGES PROCEEDINGS.

WHEREAS, Pursuant to California Water Code sections 31007, 31024 and 31025 San Lorenzo Valley Water District (hereinafter "District") is authorized to establish fees and charges; and

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIIC and XIID to the California Constitution; and

WHEREAS, Articles XIIC and XIID of the California Constitution impose certain procedural and substantive requirements relating to property related fees and charges (as defined); and

WHEREAS, the Board of Directors of the San Lorenzo Valley Water District (hereinafter "Board") believes it to be in the best interest of the community to record its decisions regarding implementation of the provisions of Proposition 218 relative to procedures for property related fees and charges proceedings and, to provide the community with a guide to those decisions and how they were reached.

NOW, THEREFORE, Be it resolved by the Board of Directors of the San Lorenzo Valley Water District as follows:

**SECTION 1. Statement of Legislative Intent.** In adopting this resolution, it is the Board's intent to adopt procedures for property related fees and charges proceedings which are consistent and in compliance with Articles XIIC and XIID of the California Constitution and, with the Proposition 218 Omnibus Implementation Act (Government Code sections 53750 through 53754). It is not the intent of the Board to vary in any way from the requirements of Articles XIIC and XIID or the Proposition 218 Omnibus Implementation Act.

**SECTION 2. Definition of Property Related Fees and Charges.** Proposition 218 defines "property related fees and charges" as "any levy other than an ad valorem tax, a special tax, or an assessment imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property related service."

**SECTION 3. Procedures for New or Increased Property Related Fees and Charges.** The District shall apply the following procedures for the establishment of new or increased property related fees or charges. Said procedures follow the requirements of Article XIID, section 6 of the California Constitution:

- A. The District shall identify each parcel upon which new or increased property related fees or charges are proposed for imposition.
- B. The District shall calculate the amount of any proposed property related fees or charges.
- C. The District shall provide written notice by mail of any proposed property related fees or charges to the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition, the amount of the proposed property related fees or charges to be imposed upon each parcel, the basis upon which the amount of the proposed property related fees or charges were calculated, the reason for the proposed property related fees or charges, together with the date, time, and location for a public hearing on the proposed property related fees or charges.

**SECTION 4. Notice of Proposed Property Related Fees or Charges.** The District shall apply the following procedures to provide property owner(s) with a notice of proposed property related fees or charges.

- A. The record owner(s) of each parcel upon which new or increased property related fees or charges are proposed shall be determined from the last equalized secured property tax assessment roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only property owners shall receive notice.
- B. Said notice shall be mailed at least forty-five (45) calendar days prior to the date set for a public hearing on the proposed property related fees or charges. The mailing address of recorder owner(s) shall be determined from the last secured property tax assessment roll.
- C. The notice provided by this section and in accordance with Article XIID, section 6 of the California Constitution shall supersede and be in lieu of any other statute requiring notice relative to the imposition or increase of any property related fees or charges, including but not limited to the notices required by California Government Code sections 53753(d) and 54954.6.
- D. Failure of any person to receive notice shall not invalidate the proceedings.
- E. The cost of providing notice may be included as a cost of the property related fees or charges.

**SECTION 5. Public Hearing.** The District shall apply the following procedures pursuant to a public hearing for proposed property related fees or charges:

- A. The Board shall conduct a public hearing relative to any new or increased of property related fees or charges.
- B. Said public hearing shall be conducted not less than forty-five (45) calendar days after mailing the notice of proposed property related fees or charges to the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition.

- C. At the public hearing, the Board shall hear and consider all public testimony regarding the proposed property related fees or charges and, shall accept written protests against the proposed property related fees or charges from the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition until close of the public testimony portion of the public hearing.
- D. The Board may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.
- E. The District Secretary is hereby designated as the impartial person to tabulate written protests.
- F. At the conclusion of the public testimony portion of the public hearing, the District Secretary shall begin tabulation of the written protests received, including those received during the public hearing.
- G. If it is not possible to tabulate the written protests on the day of the public hearing, or if additional time is necessary for public testimony, the Board may continue the public hearing to a later date to receive additional testimony, or to finish tabulating the written protests.
- H. The District Secretary shall provide the Board with a final tabulation of written protests.
- I. Upon final tabulation of written protests, if written protests against the proposed property related fees or charges are presented by a majority of property owners of the identified parcels, the Board shall not impose the property related fees or charges.

**SECTION 6. Protest Proceedings.** The District shall apply the following procedures to protest pursuant to property related fees or charges:

- A. All protest must be in writing and returned by mail to the District at the address indicated on the Notice of Proposed Property Related Fees or Charges, or hand delivered to the District Secretary at the public hearing. Protest must be received by the District not later than close of the public testimony portion of the public hearing on the proposed property related fees or charges.
- B. All written protests must be dated, contain a description of the property such as, physical address and/or Assessors Parcel Number, and be signed by the owner of record.
- C. A tenant of real property shall not, solely by virtue of such tenancy, have the power or authority to submit a protest.
- D. Only one (1) written protest shall be counted for each individual parcel.
- E. All written protest are a "public record" as that phrase is defined by the California Public Record Act (Government Code, §6252) and shall be open to public inspection after final tabulation of the written protest.

**SECTION 7. Ballot Proceedings.** Pursuant to Article XIID, section 6(c), of the California Constitution, whenever proposed property related fees or charges are required to be submitted and approved by ballot proceedings, the District shall apply the following procedures:

- A. The District shall conduct a ballot proceeding when required by Article XIID, section 6(c), of the California Constitution.
- B. Ballot proceedings required by Article XIID, section 6(c) shall be conducted not less than forty-five (45) calendar days after completion of the public hearing conducted pursuant to Section 5 of this resolution.
- C. Ballots shall be mailed to all property owners of record of each identified parcel upon which property related fees or charges are proposed for imposition at least forty-five (45) calendar days prior to the date for a public hearing on the ballot proceedings. The ballot shall comply with California Government Code Section 53753 (c). The mailing address of record owner(s) shall be determined from the last equalized secured property tax assessment roll.
- D. The Board shall conduct a public hearing on the ballot proceedings. The public hearing shall be conducted not less than forty-five (45) calendar days after mailing the ballots to record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition. At the public hearing, the District shall consider public testimony and tabulate the written ballots.
- E. The District shall not impose property related fees or charges if there is a majority protest. A majority protest exists if, upon the conclusion of the public hearing, written ballots submitted, and not withdrawn, in opposition to the property related fees or charges exceeds the written ballots submitted, and not withdrawn, in favor of the property fees or charges.
- F. All ballots must be returned by mail to the District at the address indicated on the ballot, or hand delivered to the District Secretary at the ballot proceedings public hearing. Ballots must be received by the District not later than close of the public testimony portion of the public hearing on the ballot proceedings. Ballots must be sealed in the envelope provided by the District.
- G. Each ballot must be signed by the owner of record under penalty of perjury.
- H. A tenant of real property shall not, solely by virtue of such tenancy, have the power or authority to submit a ballot.
- I. If a parcel has multiple owners, any owner may request a proportional ballot. If the ownership interest of the owner is not shown on the last secured property tax assessment roll, such request must include evidence satisfactory to the District, of the owner's proportional rights in the parcel. The District will provide the proportional ballot to the owner at the address shown on the last equalized secured property tax assessment roll. Any request for a ballot to be mailed to another location must be made in writing and, must include evidence satisfactory to the District, of the identity of the person requesting the ballot. Each proportional ballot will be marked to show the date on which the ballot was issued, to identify it as a proportional ballot, and to indicate the owner's proportional rights in the parcel. The District will keep a record of each proportional ballot provided to an owner.
- J. The District will accept only official ballots with original signatures. Photocopies will not be accepted.
- K. Upon receipt of a written request, signed by the owner and delivered to the District Secretary, the District may issue a duplicate ballot to any property

owner whose original ballot was lost, withdrawn, destroyed or never received. The duplicate ballot will be marked to show the date on which it was issued, and to identify it as a duplicate ballot or a duplicate proportional ballot. The above procedure also applies to duplicate ballots or duplicate proportional ballots that are lost, withdrawn, destroyed or never received.

- L. A ballot proceeding relative to property related fees or charges is not an election.
- M. All ballots are a “public record” as that phrase is defined by the California Public Records Act (Government Code, § 6252) and shall be open to public inspection after final tabulation of the ballots.
- N. To complete a ballot, a person must:
  - a. Mark the appropriate box supporting or opposing the proposed property related fees or charges; and,
  - b. Sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner’s authorized representative.Only one box may be stamped or marked on each ballot. All incomplete or improperly marked ballots shall be disqualified from balloting. The District Secretary shall retain all disqualified ballots.
- O. After submitting a ballot to the District the person who signed the ballot may withdraw the ballot by submitting a written statement to the District Secretary directing the District Secretary to withdraw the ballot. Such statement must be received by the District Secretary prior to close of the public testimony portion at the ballot proceedings public hearing. When ballots for the proposed property related fees or charges are tabulated, the District Secretary shall segregate withdrawn ballots from all other submitted ballots. The District Secretary shall retain all withdrawn ballots and shall indicate on the face of such withdrawn ballots that they have been withdrawn.
- P. In order to change the contents of a ballot that has been submitted, the person who signed the ballot must:
  - a. Request that such ballot be withdrawn; and,
  - b. Request that a duplicate ballot be issued and return the duplicate ballot fully completed.Each of these steps must be completed according to the procedures set forth herein.

**SECTION 8. Tabulating Ballots.** Pursuant to Article XIID, section 6(c), of the California Constitution, whenever proposed property related fees or charges are required to be submitted and approved by ballot proceedings, the District shall apply the following procedures:

- A. The District Secretary is hereby designated as the impartial person to tabulate ballots. The District Secretary shall determine the validity of all ballots. All ballots submitted, and not withdrawn, shall be accepted as valid except those in the following categories:
  - 1. A photocopy of a ballot;

2. A ballot that does not contain an original signature;
3. A letter or other form of a ballot that is not an official ballot provided by the District;
4. An unsigned ballot, or ballot signed by an unauthorized individual;
5. A ballot that lacks an identifiable mark in the box of a "yes" or "no" vote or, with more than one box marked;
6. A ballot not sealed in the envelope provided by the District.
7. A ballot received after the close of the balloting time period;
8. A ballot that appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances.

The decision of the District Secretary, after consultation with legal counsel, that a ballot is invalid shall be final and may not be appealed to the Board.

- B. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies the District Secretary will make such determination from the last equalized secured property tax assessment roll and any evidence of ownership submitted to the District prior to close of the public testimony portion of the ballot proceeding public hearing. The District Secretary will be under no duty to obtain or consider any other evidence as to ownership of property. Determination of ownership by the District Secretary will be final and conclusive.
- C. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the District Secretary may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative and on any evidence submitted to the District prior to close of the public testimony portion of the ballot proceedings public hearing. The District Secretary will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner(s). Determination of an authorized representation by the District Secretary will be final and conclusive.
- D. For properties with more than one owner of record, ballots will be accepted from each owner of record. In the event that more than one of the record owners of a parcel submits a ballot, each ballot shall be tabulated in proportion to the respective record of ownership, established to the satisfaction of the District, by documentation provided by those record owners. If only one owner of record votes, that vote shall be tabulated on behalf of the entire parcel.
- E. A property owner's failure to receive a ballot shall not invalidate the ballot proceedings conducted pursuant to this resolution and Article XIID, section 6(c) of the California Constitution.

\*\*\*\*\*

PASSED AND ADOPTED by the Board of Directors of the San Lorenzo Valley Water District, County of Santa Cruz, State of California, on the 15<sup>th</sup> day of February 2007, by the following vote of the members thereof:

AYES:

NOES:       None

ABESENT: Nelson

---

Brandon Barchi  
District Secretary  
San Lorenzo Valley Water District



PROPOSITION 218  
TAXATION—VOTER APPROVAL OF LOCAL TAXES, ETC.—INITIATIVE  
CONSTITUTIONAL AMENDMENT

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

PROPOSED ADDITION OF ARTICLE XIII C AND ARTICLE XIII D  
RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE. This act shall be known and may be cited as the "Right to Vote on Taxes Act."

SECTION 2. FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES. Article XIII C is added to the California Constitution to read:

CONST Prec. Art. XIII C, § 1

ARTICLE XIII C

SECTION 1. Definitions. As used in this article:

- (a) "General tax" means any tax imposed for general governmental purposes.
- (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.
- (c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.
- (d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

PROPOSITION 218 - 1

**SEC. 2. Local Government Tax Limitation.** Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

**SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges.** Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

**SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.**

Article XIII D is added to the California Constitution to read:

PROPOSITION 218 - 2



## ARTICLE XIII D

**SECTION 1. Application.** Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.
- (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
- (c) Affect existing laws relating to the imposition of timber yield taxes.

**SEC. 2. Definitions.** As used in this article:

- (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.
- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.
- (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.
- (f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.
- (g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

## PROPOSITION 218 - 3

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

**SEC. 3. Property Taxes, Assessments, Fees and Charges Limited.** (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

- (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.
- (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.
- (3) Assessments as provided by this article.
- (4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

**SEC. 4. Procedures and Requirements for All Assessments.** (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

PROPOSITION 218 - 4



(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

**SEC. 5. Effective Date.** Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided.

#### PROPOSITION 218 - 5



Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

**SEC. 6. Property Related Fees and Charges.** (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article; including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against

the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

- (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
  - (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
  - (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
  - (4) No fee or charge may be imposed for a 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.
  - (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.
- (c) Voter Approval for New or Increased Fees and Charges. 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 and approved by a majority vote of the 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. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.
- (d) Beginning July 1, 1997, all fees or charges shall comply with this section.

**SECTION 5. LIBERAL CONSTRUCTION.** The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

#### PROPOSITION 218 - 7



**SECTION 6. SEVERABILITY.** If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

PROPOSITION 218 - 8



COPY

## ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

660 WEST DANA STREET

P.O. BOX 279

MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

FACSIMILE (650) 967-1395

J.M. ATKINSON (1892-1982)

L.M. FARASYN (1915-1979)

RECEIVED

AUG 31 2006

SAN LORENZO VALLEY  
WATER DISTRICT

## MEMORANDUM

TO: Honorable President and Members of the Board of Directors  
San Lorenzo Valley Water District

FROM: District Counsel

RE: Bighorn-Desert View Water Agency v. Verjil  
Applicability of Proposition 218 (Calif. Constitution, Article XIII C and D)  
Water Rates

DATE: August 30, 2006

Introduction

As a result of a unanimous decision by the California Supreme Court in the case of Bighorn-Desert View Water Agency v. Verjil when the SLVWD desires to increase charges for water service, property owners must be notified and a hearing held 45 days thereafter. If a majority of the property owners object, the rate may not be approved. There is no requirement to put the rate to a vote.

Background

Proposition 218 was adopted by the voters in 1996 as Articles XIII C and D to the California Constitution. Proposition 218 was presented as the "Right to Vote on Taxes Act" and required that local governments, including special districts such as the San Lorenzo Valley Water District, must obtain voter approval upon the imposition, extension, or increase of any general tax which required approval by a majority vote of the electorate. A special tax required approval by a two-thirds vote.

Article XIII C, Section 3 specifically provided that the voters, by initiative, could challenge any local tax, assessment, fee, or charge. Article XIII D required that the assessment of fees upon a person as an incident of property ownership, including a user fee or charge for a property-related service, could be imposed only following advance notice and hearing and a vote approved by a majority of property owners. Notice can be mailed to owners of identified parcels with the ballot to be returned no later than a public hearing to be conducted not less than 45 days after the notice was mailed.

Article XIII D(6)(2)(a) further provided that "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 figure charge is submitted and approved by a majority vote



of the 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." Unless a majority of the properties object at a hearing scheduled at least 45 days after the notice, the fee could then be put on a ballot. This can be submitted by mail. Unless a majority of the properties affected by the fee vote against it, the fee is approved. Thus, a failure to vote is equivalent to agreement on the fee increase.

A property-related service, (defined in Proposition 218 as a public service having a direct relation to property ownership) was initially interpreted by the courts to not include a fee if the fee could be avoided by means other than selling the property, such as not engaging in residential leasing or not taking water. (Apartment Ass'n v. City of Los Angeles (2001) 24 Cal.4<sup>th</sup> 830; Howard Jarvis Taxpayers Ass'n v. Los Angeles (2000) 85 Cal.App.4<sup>th</sup> 79. However, in 2004, the California Supreme Court in a decision known as Richmond v. Shasta Community Services District 32 Cal.4<sup>th</sup> 409 suggested that charges for continuing service to an existing water meter might be subject to Proposition 218.

The Bighorn decision has now confirmed that charges for continuing water service are subject to Proposition 218 holding "domestic water delivery through a pipeline is a property-related service within the meaning of Proposition 218's definition of property-related services." Note that because the Court's determination speaks of water delivery, turn-on, turn-off, meter repair and other charges for services other than ongoing water service are not made subject to Proposition 218 by this decision.

Bighorn does require that charges for water and sewer service must comply with the notice and majority protest proceedings of Proposition 218, but not the election requirement, because the partial exemption (as recited above in Article XIII(D)(6)(2)(a)) applies to charges for those services.

Therefore, when the SLVWD desires to increase charges for water service, property owners must be notified and a hearing held 45 days thereafter. If a majority of the property owners object, the rate may not be approved. There is no requirement to put the rate to a vote.

### Analysis

The voters can, by initiative, reduce the District's rates according to the Supreme Court decision in the Bighorn case. Property-related fees, including water and sewer service, may be reduced or repealed by initiative. The fact that the state legislature has delegated the power to set rates directly to local agencies such as the SLVWD does not change this rule, because Proposition 218 amended the Constitution which binds any act of the state legislature. Thus, the fact that state statutes require water rate setting bodies to set rates high enough to cover the costs to provide an adequate and safe water supply may not be of any effect should the voters, by initiative, decide to reduce the rates. This precise issue was not addressed by the Bighorn Court and may be the issue of a later case.

Another issue not addressed by the Bighorn Court concerned rate covenants and revenue bonds. Bond holders who purchase revenue bonds issued by the utility provider do so under a promise by the agency to maintain rates high enough that the infrastructure may be maintained and interest and principal on the bonds can be paid. Such promises are binding contracts protected by the United States Constitution which prohibits the impairment of contracts through later enacted legislation. A rate reduction initiative which violated a bond covenant would likely be declared invalid.

At this point, the most important part of the Bighorn decision for the SLVWD is that ordinary charges for water and sewer service cannot be imposed or increased without 45 days mailed notice to all ratepayers (which can be included in a bill) and then the holding of a majority protest proceedings in which silence is consent. As majority protests will be rare, the primary consequences of the rule are the expense and delay of the notice and the political pain of a majority protest hearing on rate hikes.

Attached is a brief recitation from the CSDA of the Bighorn decision. Please let me know if you have any questions about this.

Respectfully,



MARC G. HYNES  
District Counsel

MGH:cwb  
Attachment

cc: District Manager