

VOLUMETRIC WASTEWATER PRICING AND PROPOSITION 218

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Today's Presentation

- Introduction
- When Does Prop 218 Apply?
- Substantive Requirements of Prop 218
- Proportionality Requirement of Prop 218
- Recommendations for Complying with Prop 218

Disclaimer

- This presentation is provided solely for general information and is not offered or intended as legal advice.
- Utilities should seek the advice of an attorney when confronted with legal issues regarding Proposition 218.

When does Prop 218 Apply?

- Prop 218 does not apply to connection charges. See *Richmond (2004)*
- Prop 218 applies “whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee.” *Bighorn-Desert (2006)*
- Prop 218 applies to rate design. See *Bighorn-Desert; City of Palmdale (2012)*
- Prop 218 applies to sewer charges. See *City of Roseville (2002); Richmond (dicta); Paland (2010)*

Key Substantive Req'ts of Prop 218

1. Revenues from the fee shall not exceed the costs required to provide the service.
2. Revenues from the fee shall not be used for any purpose other than that for which it was imposed.
3. **The amount of fee “shall not exceed the proportional cost of the service attributable to the parcel.”**
4. Fees may only be imposed for services that are used.
5. No fee may be imposed for general government services.

Proportionality Req't of Prop 218

- Only one reported case addresses proportionality requirement of Prop 218 in the context of tiered rates: *City of Palmdale* (2012)
 - Goal of promoting water conservation did not allow water district, in compliance with Proposition 218's limitation on fees or charges for property-related services, to employ tiered pricing structure which imposed escalating costs on irrigation-only customers, depending on their usage, that were disproportionate to rates which district charged other users. (Westlaw Headnote)
 - If charging different rates for different customer classes, utility must demonstrate that the costs of service for different customer classes justifies the different rates

City of Palmdale (Cont'd)

- Court of Appeal in *City of Palmdale* did **NOT** invalidate tiered pricing *per se*.
 - ▣ Conservation rate design and allocation-based conservation pricing is ok, as long as conservation “is attained in a manner that ‘shall not exceed the proportional cost of service attributable to the parcel.’”
 - ▣ Court recognized that statutory and Constitutional provisions require policy of water conservation
 - ▣ Court notes that water conservation policy is already built into the customer’s Tier 1 allocation (which is equal for all users).

Proportionality (Prop. 13)

- There is a “dearth of authority” on what “proportional cost of the service attributable to the parcel” means under Prop 218, so look to other laws (*Proposition 218 Implementation Guide, League of California Cities, 2007*)
- Under Prop 13, fees must bear a “reasonable relationship” to the benefits and burdens on the system in order to be a fee rather than a special tax (Gov. Code § 50076)
 - ▣ See *Beaumont Investors* (1985)
 - ▣ *City of Dublin* (1993)
 - ▣ *California Farm Bureau Federation* (2011)
 - ▣ *Cal. Assn of Prof. Scientists* (2000)

Proportionality (Other Statutes)

- Development Fees Require Proportionality
 - See Gov. Code § 66001(b)
- Site specific review not required under § 66001(b)
 - *Garrick Development Corp.* (1992) (“The fee at issue here is a general one applied to all new residential development and valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed.”)

Proportionality (Flat vs Volumetric)

- I don't really see how volumetric rates would be more likely to violate Prop 218 than flat rates
 - ▣ Prop. 218 applies equally to flat or volumetric rates
 - ▣ If on average flat rates are equal to the average cost of service, don't those flat rates result in some customers paying more than "the proportional cost of the service attributable to the parcel"?
- Volumetric pricing is also consistent with Prop. 218's goals of avoiding subsidies and providing tax relief
 - ▣ Higher usage customers result in higher costs

Prop 218 and Wastewater Pricing

- Recommendations to Consider:
 - As always, develop a robust cost of service analysis
 - Include avoided costs in the cost of service calculation
 - Water conservation can reduce costs (e.g., costs of acquiring and treating water, expanding water treatment capacity / deferred capital improvements)
 - Provide reasoned explanation for rate design based on cost of service
 - Avoid disparate treatment of similar customer classes unless justified by different costs of service
 - Explain how tiers/rates for customer classes are related to the benefits and burdens on the system

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