

Water District Rate Increases Violated Proposition 218

A court of appeal invalidated a water district's adopted rate increases, concluding that the district failed to meet the water law's requirement of showing a 50 percent increase in the cost of the service over the prior year.



The

Court of Appeal upheld plaintiffs' challenge to the rate increase, finding that the District failed to prove that the amount of the increase did not exceed the cost of providing the water service. Under Proposition 218, revenues from water charges may not exceed either "the cost of providing the property-related service" or the "proportional cost of the service provided to [each] parcel." Art. XIII D, § 6(b). In this case, nothing in the administrative record explained either how the net revenue the District would derive from the rate increase was related to the cost of providing the property-related service or how the water charge was proportional to the cost of providing service to each parcel. "In simple terms," the court said, "the net revenue appears to be a profit after expenses are deducted from revenues." The District argued that the rate increase was justified because the District had been operating at a deficit and drawing funds from reserves to meet its obligations and therefore "opted to increase rates to allow for the rebuilding of meaningful reserves." While generally accepting the proposition that reserves may form a component of a property-related charge, the court found nothing in the record that identified or quantified historic or projected reserves needed for the District's services or showed that

the projected net revenue was pledged for any particular purpose. Instead, the court said, "the district asks us to take an attorney's argument as evidence, which we cannot do." The court also rejected the District's argument that plaintiffs had failed to exhaust administrative remedies because they had not presented their objections and arguments at the hearing required under Proposition 218. Assuming without deciding that a Proposition 218 hearing generally constituted an administrative remedy that needed to be exhausted, the court found the requirement inapplicable here because the District had not complied with Proposition 218's notice requirements. The court ruled that Proposition 218 required the agency proposing a rate increase "to provide ratepayers with notice of the *actual* amount of the rate increase pertinent to [them] to allow the ratepayer a meaningful opportunity to determine whether to consent to or oppose it." In this instance, the court said, the District had provided only hypothetical examples of how a ratepayer's charges would increase over time. This "hide-the-ball approach to the amount of the rate increase" was incongruent with "the constitutional obligation imposed upon the district to calculate the amount of the charge to be imposed upon *each* parcel and to provide ratepayers with notice of *such* amount." Because the District's notice did not comply with the procedural requirements of Proposition 218, plaintiffs were excused from exhausting any administrative remedy that might otherwise apply.

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