



**SCOTIA COMMUNITY SERVICE DISTRICT  
NOTICE IS HEREBY GIVEN THAT A REGULARLY SCHEDULED MEETING OF THE  
BOARD OF DIRECTORS**

**WILL BE HELD AT:**

**122 MAIN STREET  
SCOTIA, CALIFORNIA**

**THURSDAY, September 18, 2014**

**6:30 P.M.**

**AGENDA**

**A. CALL TO ORDER**

The Presiding officer will call the meeting to order and call the roll of members to determine the presence of a quorum.

**ROLL CALL (DIRECTORS IN ATTENDANCE)**

**PLEDGE OF ALLEGIANCE**

**ADDITIONS TO THE AGENDA**

Items may be added to the agenda in accordance with Section 54954.2(b)(t) of the Government Code (Brown Act). Items will be added to the agenda only on the basis that *there is a need to take immediate action* and that the *need for action came to the attention* of the Scotia Community Services District Board of Directors *after the agenda was posted*. All documentation supporting this agenda is available for public review in the District office during normal business hours.

**B. SETTING OF AGENDA**

The Board may adopt/revise the agenda as presented.

**C. CONSENT CALENDAR**

Consent Calendar items are expected to be routine and non-controversial, to be acted upon by the Board of Directors at one time without discussion. If any Board member, staff member, or interested person requests that an item be removed from the Consent Calendar, it shall be removed so that it may be acted upon separately.

**1. APPROVAL/DISAPPROVAL OF MINUTES FROM PREVIOUS MEETING(S)**

**August 21, 2014**

**SCSD Board Meeting Minutes**

**D. PUBLIC COMMENTS & WRITTEN COMMUNICATIONS**

Regularly scheduled meetings will provide an opportunity for members of the public to directly address the SCSD Board Members-Elect on any action item that has been described in the agenda for the meeting, before or during consideration of that item, or on matters not identified on the agenda within the Board-elect's jurisdiction. Comments are not generally taken on non-action items such as reports or information.

**CORRESPONDENCE**

The Board will review recent District correspondence

Written correspondence is always welcome and should be used for complex issues.

**1. District received email memo from Mt. Tamalpais Historical Railroad Committee:**

**" #9**

**Arlene (arlenehalligan@sbcglobal.net)**

**8/27/14**

**To: Mark Richardson**

*Hi Mark:*

*Checking on the scrap value of #9, we find #9 weighs about 36 tons and scrap steel is \$180 a ton so the scrap value is \$6480.*

*Would the Town of Scotia consider a check from us to cover this amount? Would appreciate this idea going before the board.*

*Many thanks. Arlene"*

**E. PUBLIC HEARING**

No public hearing issues.

**F. REPORTS**

No specific action is required on these items, but the Board may discuss any particular item as required.

**Board and Staff Reports**

Committee Reports/Information Review, update on staff/consultant reports.

Members of the Board may report on their respective committees.

**1. Interim General Manager's Report:**

The Interim General Manager may update the Board on current District projects, concerns and accomplishments.

**2. Fire Chief's Status Report:**

The Fire Chief may update the Board quarterly.

**G. CONTINUED AND NEW BUSINESS**

**1. CONTINUED BUSINESS**

**Review and discussion of proposed budget structure, issues and requirements during the initial start up and first year proposed budget. Review of LAFCO approved financial plan and first year budget.**

**Review of accounting and bookkeeping requirements, policies and procedures pending establishment of District accounting structure.**

**H. ADJOURNMENT**

Notice regarding the Americans with Disabilities Act: The District adheres to the [Americans with Disabilities Act](#). Persons requiring special accommodations or more information about accessibility should contact the District Office. Notice regarding Rights of Appeal: Persons who are dissatisfied with the decisions of the SCSB Board of Directors have the right to have the decision reviewed by a State Court. The District has adopted [Section 1094.6](#) of the [Code of Civil Procedure](#) which generally limits the time within which the decision may be judicially challenged to 90 days.

**DRAFT**

**Minutes of the Regular Meeting of  
The Scotia Community Service District  
Thursday, August 21, 2014,  
at 6:30 PM  
122 Main Street, Scotia, CA**

**Agenda Item A - Call to Order, Roll Call, Additions to the Agenda**

The regular meeting of the Board of Directors of the Scotia Community Service District convened at 6:30 pm with the following directors and staff in attendance:

Rick Walsh, Director - present  
John Broadstock, Director - present  
Gayle McKnight, Director - present  
Diane Bristol, Director - present  
Susan Pryor, Director - present

Mark Richardson, Interim General Manager - present

**Agenda Item B -**

**Approval of the Agenda** Director Walsh  
**Seconded:** Director McKnight  
**Motion Summary:** Approval of Agenda as adjusted  
**Motion Vote:** AYES - All  
**Motion passed**

**Agenda Item C - Approval/Disapproval of minute(s) from previous meeting(s)**

**Regular Meeting of August 21, 2014**

**Approval of the Agenda** Director McKnight  
**Seconded:** Director Bristol  
**Motion Summary:** Approval of Agenda as adjusted  
**Motion Vote:** AYES - All  
**Motion passed**

**Agenda Item D - Public Comments & Written Communications**

No Public Comments or Written Communications

No Board action- information only item.

**Agenda Item E - Public Hearing -**

**No Public hearing**

**Agenda Item F - Staff and committee Reports:**

**Agenda Item G - Continued and New Business**

**Agenda G1: Motion to form a Board Committee:**

**"Financial Planning, Accounting, and Policy and Procedures for  
District Financial Responsibilities."**

**Agenda Item H - Adjournment at 8:50 pm**

**Board Director Rick Walsh made motion to adjourn meeting to next Regular  
meeting September 18, 2014 at 6:30 pm**

**Seconded by Director McKnight**

**Motion to Adjourn by voice vote**

**AYES - All Board members**



## Monthly Manager's Report Regular Meeting

**Date:** September 18, 2014

**To:** Board of Directors, SCSD

**From:** Mark Richardson, Interim General Manager

**General:** This report is a general update for the Board from the IGM. I will touch on routine topics for information purposes. None of the items discussed in this report require board action at this time.

**First and foremost:** All actions by the SCSD shall be by ordinance (rules and regulations), resolution or motion. No other actions, discussions or decisions by the board have legal status.

### **IGM/Board outreach:**

**Accounting:** Jamie Corsetti, CPA has submitted a draft set of a Chart of Accounts , Profit and Loss Reports. The chart and the respective cost centers identified, in conjunction with a budget format developed for the transition for first year operations, will be used to develop our first year budget, showing specific cost centers. The draft chart establishes the cost centers for many of our service area's, and is a beginning that will tie our proposed budget into organized categories consistent with requirements for annual audits, as required by the State and IRS. The newly formed Financial Services Committee, made up of Rick Walsh and myself will begin to develop our actual first year budget with these accounting templates.

**Legal Services - An Overview:** The District Attorney is retained by the District Board to provide general legal services to the District Board, District Manager and District Departments. The District Attorney is retained by the District Board through a contract relationship, and the District Attorney's client is the District Board, not any individual Board member. The District Attorney also serves as general counsel to the District's Successor Agency to the Arcata Community Development Agency.

The District Attorney provides general legal counsel in matters pertaining to:

### ***Legal Review and Advice***

- Advises the District Board, District Manager and District staff on legal matters impacting or affecting the District
- Attends District Board meetings, and other meetings upon request

### ***Legal Representation***

- Provides legal defense in matters pertaining to District liability and exposure
- Manages and defends the District against litigation and claims

### ***Document Preparation***

- Prepares and reviews ordinances, resolutions, contracts, agreements, and other legal documents
- Prepares legal pleadings, reports, correspondence and other legal documents

### ***District Code Enforcement***

- Enforces and prosecutes violations of the District code and regulations
- Supports staff in fairly enforcing community standards and codes.

The following attorneys have expressed interest in being included in an RFQ:

#### **Nancy Diamond, Attorney, Arcata, CA**

*"Ms. Diamond is the long time City Attorney for Arcata."*

#### **Paul Brisso, and/or Rus Gans, MITCHELL, BRISSO, DELANEY & VRIEZE, LLP**

*"Russ and..." I do a lot of general municipal work together. Russ does primary contact with Garberville and also City of Rio Dell and McKinleyville CSD. I do primary contact with Harbor District, Humboldt Bay Water, Humboldt CSD, Lolita CSD, Manila CSD, NC Air Quality Hearing Board, etc. " Paul A. Brisso*

#### **Christopher Neary and O'Brien Willits, CA (and Eureka):**

"Practice Areas

[Environmental Law](#)

[Municipal Law](#)

[Water Law](#)

[Real Estate Law](#)

[Business/Commercial Law](#) "

#### **Mark E. Mandell, Esq., Principal, Mandell Municipal Counseling**

Los Angeles, CA (several local Humboldt clients, including McKinleyville CSD) This firm's expertise includes development of rates and tax structures. SCSD will need to put a parcel tax measure before the property owners of the community, as well as going through the Property Tax and rate structure process referred to as Proposition 218.

**Manager's Recommendation:** I recommend we invite *Nancy Diamond and Christopher Neary* to a special Board Meeting in October to interview for legal services during our start-up period.

**Water System Status:** Scotia Water System is in compliance with regulations. The State has moved the Drinking Water Program from the California Department of Public Health to the State Water Resource Control Board. This move had been planned and proposed for several years. Effective July 1, 2014, the Drinking Water Program was moved to the SWRCB. All communications, contacts, ectal have remained the same.

**Water Distribution Repairs:**

**Wastewater System:**

**Storm Water Management:**

**Fire Department Status:** Fire Chief issues quarterly reports.

**Parks & Recreation :** This section will deal with the various properties identified as part of our Parks & Recreation Department. This includes the following facilities and properties:

**Winema Theater**

**Scotia Museum**

**Scotia Museum Park - Train locomotive and artifacts from logging.**

**Community Forest - 22+ acres of riparian habitat from Fireman's Park to the Scotia/Rio Dell bridge along the Eel River.**

**Soccer Field -**

**Carpenter Field - baseball**

**Fireman's Park - Barbecue and picnic grounds**

Table  
**Scotia Community Services District Start-Up Budget, 0% Tax Allocation Factor**  
**Estimated First Full Year Operating Budget after Transition**

| Revenues   |   |                  |                           |                 |                 |                       |                    |
|--|---|------------------|---------------------------|-----------------|-----------------|-----------------------|--------------------|
| Fund Type  | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Department       | Total All Services |
| Available Cash on Hand   | \$0   | \$0              | \$0                       | \$0             | \$0             | \$0                   | \$0                |
| Interest Earnings  | \$0   | \$0              | \$0                       | \$0             | \$0             | \$0                   | \$0                |
| Property Tax <sup>1</sup>  |   |                  |                           |                 |                 |                       | \$0                |
| TOS Initial Funding of Contingency                                 | \$40,000  | \$44,000         | \$15,000                  | \$14,000        | \$5,000         | \$17,000              | \$135,000          |
| TOS Start-up Funding   | \$20,000  | \$0              | \$0                       | \$0             | \$0             | \$0                   | \$20,000           |
| Special Use Income   |   |                  |                           |                 | \$2,000         | \$0                   | \$2,000            |
| User Fee Revenues Necessary to Balance Budget                      | \$220,060   | \$266,560        | \$92,088                  | \$85,790        | \$25,160        | \$166,266             | \$855,924          |
| Connection Fees  | \$1,000   | \$1,000          |                           |                 |                 |                       | \$2,000            |
| Miscellaneous  | \$100   | \$100            | \$100                     | \$100           | \$0             | \$0                   | \$400              |
| <b>Sub-Total Resources</b>   | <b>\$281,160</b>  | <b>\$311,660</b> | <b>\$107,188</b>          | <b>\$99,890</b> | <b>\$32,160</b> | <b>\$183,266</b>      | <b>\$1,015,324</b> |
| Outside Revenue Sources To Pay for Capital Expenditures            |   |                  |                           |                 |                 |                       |                    |
| CSD Debt Finance w/User Fee Revenues                               |   |                  |                           |                 |                 |                       | \$0                |
| <b>TOTAL CAPITAL EXPENDITURE REVENUES</b>                          | <b>\$0</b>  | <b>\$0</b>       | <b>\$0</b>                | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>            | <b>\$0</b>         |
| <b>TOTAL RESOURCES</b>   | <b>\$281,160</b>  | <b>\$311,660</b> | <b>\$107,188</b>          | <b>\$99,890</b> | <b>\$32,160</b> | <b>\$183,266</b>      | <b>\$1,015,324</b> |
| Expenditures   |   |                  |                           |                 |                 |                       |                    |
| Personal Services  | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Dept.            | Total All Services |
| Attorney   | \$5,000   | \$5,000          | \$1,000                   | \$500           |                 | \$2,000               | \$13,500           |
| Bookkeeping  | \$10,000  | \$10,000         | \$5,000                   | \$2,500         | \$500           | \$2,000               | \$30,000           |
| Engineering  | \$5,000   | \$7,500          | \$2,000                   | \$1,000         |                 | \$0                   | \$15,500           |
| Operations/Maintenance Staff (Salaries & Benefits)                 | \$102,960   | \$102,960        | \$51,480                  | \$68,640        | \$17,160        | \$81,900              | \$425,100          |
| <b>TOTAL PERSONAL SERVICES</b>                                     | <b>\$122,960</b>  | <b>\$125,460</b> | <b>\$59,480</b>           | <b>\$72,640</b> | <b>\$17,660</b> | <b>\$85,900</b>       | <b>\$484,100</b>   |
| Materials and Services   | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Dept.            | Total All Services |
| Bond, Dues, Publications   | \$1,000   | \$1,000          | \$500                     | \$250           |                 | \$0                   | \$2,750            |
| General Supplies, Lab, Permitting & Monitoring                     | \$10,000  | \$75,000         | \$5,000                   | \$2,000         | \$4,500         | \$6,150               | \$102,650          |
| Utilities  | \$200   | \$200            | \$6,720                   |                 |                 | \$1,080               | \$8,200            |
| General Maint & Repair   | \$10,000  | \$10,000         | \$6,000                   | \$2,000         | \$1,000         | \$7,000               | \$36,000           |
| Insurance  | \$30,000  | \$20,000         | \$5,000                   | \$5,000         | \$2,000         | \$2,000               | \$64,000           |
| Electrical   | \$50,000  | \$25,000         | \$4,488                   |                 | \$1,000         | \$0                   | \$80,488           |
| Contracted Maintenance Services                                    | \$10,000  | \$5,000          | \$2,000                   | \$1,000         |                 | \$0                   | \$18,000           |
| <b>TOTAL MATERIALS AND SERVICES</b>                                | <b>\$111,200</b>  | <b>\$136,200</b> | <b>\$29,708</b>           | <b>\$10,250</b> | <b>\$8,500</b>  | <b>\$16,230</b>       | <b>\$312,088</b>   |
| Annual Payment for Overhead  | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Dept.            | Total All Services |
| Office/shop  | \$0   | \$0              | \$0                       | \$0             | \$0             | \$0                   | \$0                |
| Equipment  | \$0   | \$0              | \$0                       | \$0             | \$0             | \$0                   | \$0                |
| <b>Total Overhead Payment</b>                                      | <b>\$0</b>  | <b>\$0</b>       | <b>\$0</b>                | <b>\$0</b>      | <b>\$0</b>      | <b>\$0</b>            | <b>\$0</b>         |
| <b>TOTAL O&amp;M</b>   | <b>\$234,160</b>  | <b>\$261,660</b> | <b>\$89,188</b>           | <b>\$82,890</b> | <b>\$26,160</b> | <b>\$102,130</b>      | <b>\$796,188</b>   |
| Other Expenditures   | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Department       | Total All Services |
| Contingency Fund   | \$40,000  | \$44,000         | \$15,000                  | \$14,000        | \$5,000         | \$17,000              | \$135,000          |
| Other Expenditures <sup>2</sup>                                    |   |                  |                           |                 |                 | \$64,136 <sup>2</sup> | \$64,136           |
| <b>TOTAL OTHER EXPENDITURES</b>                                    | <b>\$40,000</b>   | <b>\$44,000</b>  | <b>\$15,000</b>           | <b>\$14,000</b> | <b>\$5,000</b>  | <b>\$81,136</b>       | <b>\$199,136</b>   |
| <b>TOTAL EXPENDITURES</b>  | <b>\$281,160</b>  | <b>\$311,660</b> | <b>\$107,188</b>          | <b>\$99,890</b> | <b>\$32,160</b> | <b>\$183,266</b>      | <b>\$1,015,324</b> |
| Capital Outlay   | Water   | Wastewater       | Streets & Street Lighting | Storm           | Ball Park       | Fire Department       | Total All Services |
| Fire Apparatus and Personal Gear Upgrade                           |   |                  |                           |                 |                 |                       | \$0                |
| Office Equipment/furnishings Start-up                              | \$7,000   | \$6,000          | \$3,000                   | \$3,000         | \$1,000         |                       | \$20,000           |
| Estimated Capital Outlay - System Upgrades                         |   |                  |                           |                 |                 |                       |                    |
| <b>Total Capital Expenditures</b>                                  | <b>\$7,000</b>  | <b>\$6,000</b>   | <b>\$3,000</b>            | <b>\$3,000</b>  | <b>\$1,000</b>  | <b>\$0</b>            | <b>\$20,000</b>    |
| <b>Unexpended Fund Balance (Recommended Operating Contingency)</b> | (operating contingency is recommended to be set at 2-months operating costs, or approx. 16% of O&M Costs This line item will not be initially funded) |                  |                           |                 |                 |                       |                    |

| Estimated Monthly User Fees Based On Revenues Needed To Operate CSD   |       |            |                           |       |           |                 |                    |
|---|-------|------------|---------------------------|-------|-----------|-----------------|--------------------|
| Fund Type   | Water | Wastewater | Streets & Street Lighting | Storm | Ball Park | Fire Department | Total All Services |
| Estimated Monthly User Fees Required to Balance Revenues (O&M and Debt Finance)   | \$25  | \$56       | \$19                      | \$18  | \$5       | \$11            | \$134              |
| EDUs  | 731   | 400        | 400                       | 400   | 400       | 1243            | 532                |
| <p>1. Figures obtained from Study performed by Munifinancial - Rio Dell - Scotia Proposed Annexation Fiscal Impact Studies (Draft), Worst Case Scenario figures are used.</p> <p>2. Expenditure to a sinking fund to be created by CSD for Fire Equipment/Apparatus replacement</p> |       |            |                           |       |           |                 |                    |



# PROPOSITION 218

## *Local Agency Guidelines for Compliance*

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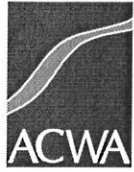
2007 Update



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Association  
of California  
Water Agencies  
Since 1910  
Leadership  
Advocacy  
Information

*ACWA is a statewide non-profit association whose 440 public agency members are responsible for about 90% of the water deliveries in California.*

**ACWA's mission** is to assist its members in promoting the development, management and reasonable beneficial use of good quality water at the lowest practical cost in an environmentally balanced manner.

May 2007

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Executive Director  
Steve Hall

# PROPOSITION 218

## *Local Agency Guidelines for Compliance*

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2007 Update



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*Proposition 218: Local Agency Guidelines for Compliance*

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## **Foreword**

This publication is intended to provide general information and guidance to ACWA member agencies on Proposition 218-related issues typically faced by ACWA members (i.e., water districts and agencies and other special districts that provide water and sewer services). ACWA members tend to rely more on fees, charges, assessments and standby charges for revenue than on new or increased taxes. Therefore, these guidelines put greater emphasis on fees, charges and assessments than on taxes.

This publication is not intended to provide legal advice. Readers should consult their legal counsel when confronted with issues relating to Proposition 218's applicability and requirements. A public agency's legal counsel is responsible for advising its governing board and staff and should always be consulted when legal issues arise.

## **Dedication**

This publication is dedicated to Nicole A. Tutt, Esq., 1969 - 2007, formerly of Nossaman, Guthner, Knox & Elliott, LLP in San Francisco. A peerless water law and public agency attorney and a member of ACWA's Proposition 218 Legislative Subcommittee, Nicole's contributions to ACWA and to the development of Proposition 218 jurisprudence will always be remembered.

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## Chapter 1 – Introduction and Summary

### Introduction

Proposition 218, officially titled the “Right to Vote on Taxes Act,” was approved by California voters on November 5, 1996. It amended the California Constitution by adding articles XIII C and XIII D, which established additional substantive and procedural requirements and limitations on new and increased taxes, assessments and property-related fees and charges.

In 1997, shortly after the adoption of Proposition 218, the Association of California Water Agencies (ACWA), through a Proposition 218 Subcommittee of the Legal Affairs Committee, published *Proposition 218: Local Water Agency Guidelines for Compliance* (ACWA, Feb. 1997). With the law having just been adopted, the 1997 guidelines did not have the benefit of subsequent implementing legislation and court cases that have clarified the applicability, meaning and operation of Proposition 218. In preparing the 1997 guidelines, the subcommittee struggled in particular with the applicability of Proposition 218 to new and increased water and other utility system service charges.

Subsequent implementing legislation and court cases have clarified the scope and nature of the requirements and limitations under Proposition 218. ACWA therefore has determined that it is appropriate to update the 1997 guidelines with this 2007 ACWA Proposition 218 publication.

### Brief History Leading to Proposition 218

Proposition 218 can best be understood against its historical background. It was the latest in a line of voter-approved initiatives in California restricting the authority of government agencies to raise and spend local revenue. The line started with Proposition 13 in 1978.

Proposition 13 (Cal. Const., art. XIII A), also known as the Jarvis Initiative, focused mainly on property taxes. It rolled back property taxes, required that special taxes be approved by two-thirds vote of the electorate, limited *ad valorem* real property taxes to 1% of assessed valuation, limited increases in assessed valuation to 2% per year unless the property ownership changes, and provided that only counties may levy a property tax. Since courts consider Proposition 218 as Proposition 13’s progeny, cases involving Proposition 13 therefore provide guidance in construing Proposition 218. (See, e.g., *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 838-839; *Howard Jarvis Taxpayers Association v. City of San Diego* (1999) 72 Cal. App.4th 230, 237-240.)

In 1979, voters approved Proposition 4, also known as the Gann Initiative. (Cal. Const., art. XIII B; Gov. Code, §§ 7900–7914.) It imposed appropriations limits on spending proceeds of taxes. This fiscal restraint focused on controlling spending as opposed to limiting taxes, as did Proposition 13.

Proposition 62 was approved by voters in 1986 and amended parts of the California Government

## Proposition 218

### Local Agency Guidelines for Compliance

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Code. (See Gov. Code, §§ 53720–53730.) Proposition 62 imposed substantive and procedural requirements on new and increased taxes. Proposition 218 made much of Proposition 62 redundant, and only a few provisions relating to the procedure to approve new taxes remain significant today.

In the decades following the adoption of Propositions 13 and 62, courts have been called upon to interpret and construe the laws in a variety of facts and circumstances. Proposition 13 contains some general language and does not define key words and phrases. For example, it imposed for the first time limitations on “special taxes,” but did not define the phrase. In some cases, courts found the new restrictions to be applicable while other courts concluded the restrictions did not apply. In one significant case shortly before Proposition 218 was approved, the California Supreme Court concluded in *Knox v. City of Orland* (1992) 4 Cal.4th 132 that a particularly controversial assessment district levy for park maintenance was a valid special assessment and not a special tax within the meaning of Proposition 13.

The authors of Proposition 218 believed that the courts were not fairly and properly interpreting and applying the requirements of Propositions 13 and 62. They particularly disagreed with the ruling in *Knox*. Consequently, the initiative proponents proposed another voter-approved initiative to clarify, tighten up and expand restrictions against local government taxes, assessments and property-related fees and charges. Proposition 218 was placed on the ballot at the November 1996 election and approved by 56.6% of the electorate.

Like the earlier measures, Proposition 218 also contained some ambiguous and undefined terms

and phrases, especially in connection with property-related fees and charges. It also imposed significant and novel procedures concerning the adoption of new and increased assessments. In 1997, in an effort to clarify some aspects of Proposition 218, the California Legislature adopted implementing legislation, the Proposition 218 Omnibus Implementation Act (Gov. Code, §§ 53750–53754).

As with Propositions 13 and 62, Proposition 218 immediately precipitated litigation and numerous court cases. These guidelines discuss and cite key cases. Many of the cases considered the scope and applicability of Proposition 218. In particular, there was uncertainty about its applicability to water service charges. That uncertainty was resolved by the California Supreme Court in *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, which concluded that a water agency’s charges for ongoing water delivery are subject to Proposition 218.

## Summary of Proposition 218

### Overview

The principal purpose of Proposition 218 can be found in its 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 mea-



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sure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.” (Right to Vote on Taxes Act § 2, West’s Ann. Cal. Const., art. XIII C, § 1, Historical Notes.) Proposition 218 was designed to close local government-devised and court-approved loopholes in Proposition 13.

Proposition 218 buttressed Proposition 13’s limitations on real property taxes and special taxes by placing analogous restrictions on assessments, fees and charges. Proposition 218 contained two parts, articles XIII C and XIII D. Article XIII C imposed restrictions on new and increased general and special taxes. It also extended the initiative power to the reduction and repeal of local taxes, assessments, fees and charges. Article XIII D imposed restrictions on new and increased assessments (which include standby charges) and property-related fees and charges.

Although the phrase “property-related fees and charges” is not defined in Proposition 218, it has become a common phrase to describe fees and charges subject to Proposition 218 and is used throughout this publication. Generally, property-related fees and charges are those that are (a) imposed on property, (b) imposed on persons as an incident of property ownership, or (c) imposed as user charges for a property-related service.

The act includes a “liberal construction” provision requiring that the “provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.” (Right to Vote on Taxes Act § 5, West’s Ann. Cal. Const., art. XIII C, § 1, Historical Notes.) Courts therefore will construe Proposition 218 in accordance with the natural

and ordinary meaning of the language used by the voters of California in a manner that effectuates their purpose in adopting the law. (*Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1355.)

Articles XIII C and XIII D apply to cities, counties, special districts, school districts, redevelopment agencies, and other local or regional governmental entities. “Special district” means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited geographic boundaries, which covers all water districts and water agencies. (Cal. Const., art. XIII C, § 1, subds. (b)-(c) and art. XIII D, § 2, subd. (a).)

Proposition 218 imposed procedural requirements and substantive limitations on local government agency fiscal affairs. It did not provide legal authority to any agency to adopt or impose any tax, assessment, fee or charge. (Cal. Const., art. XIII D, § 1; see also Gov. Code, § 53727.) The substantive authority for any levy must be found in some other constitutional provision or statute.

Since Proposition 218, the only types of levies that may be imposed on property or on persons as an incident of property ownership are the following:

- *Ad valorem* property tax (generally limited to the 1% property tax)
- Special taxes
- Assessments
- Fees and charges for property-related services

(Cal. Const., art. XIII D, § 3, subd. (a).)

Gas and electrical service fees and charges are not subject to article XIII D, but may be subject to

the initiative provisions of article XIII C. (See Cal. Const., art. XIII D, § 3, subd. (b).)

### **Taxes**

Article XIII C provides that all taxes imposed by a local government agency must be either general taxes or special taxes. There can be no other type of tax. (Cal. Const., art. XIII C, § 2, subd. (a); see also Gov. Code, § 53721.) “General tax” means any tax imposed for general governmental purposes. “Special tax” means any tax imposed for specific purposes, even if the tax is ultimately placed into a general fund. (Cal. Const., art. XIII C, § 1, subds. (a) & (d).)

### ***General Taxes***

Article XIII C prohibits special purpose districts and agencies from levying general taxes. (Cal. Const., art. XIII C, § 2, subd. (a).) For most ACWA members (which generally are special districts), the only potential taxes to consider are special taxes. The distinction between general and special taxes therefore is of little significance. These guidelines will not address general taxes in detail nor the distinction between general and special taxes.

For cities, counties and other local government agencies authorized to levy general taxes, a general tax cannot be imposed, extended or increased until the electorate approves the tax by majority vote. The tax election must be consolidated with a regularly scheduled general election for governing board members of the local government agency (except in cases of emergency). (Cal. Const., art. XIII C, § 2, subd. (b).)

### ***Special Taxes***

No local government agency 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. (Cal. Const., art. XIII C, § 2, subd. (c).)

To “extend” an existing special tax means a decision by an agency to extend the effective period for the tax, including, but not limited to, amendment or removal of a sunset provision or expiration date. To “increase” an existing special tax means a decision by an agency that either increases the applicable tax rate or revises the methodology used to calculate the tax if that revision results in an increased amount being levied on any person or parcel. (Gov. Code, § 53750, subds. (e) & (h).)

A tax is not “increased” if the action (1) adjusts the amount of a tax in accordance with a pre-Proposition 218 schedule of adjustments (including a clearly defined inflation adjustment formula), or (2) implements or collects a previously approved tax, so long as the previously approved rate or methodology is not increased or revised. A tax also is not considered “increased” if higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land. (Gov. Code, § 53750, subd. (h).)

A new or increased special tax must be proposed by an ordinance or resolution approved by two-thirds vote of the local government agency governing board. The tax ordinance or resolution must include the type and rate of tax, method of collection, date of the tax election, and the purpose or service for the proposed special tax. (Gov. Code,

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§ 53724.) The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever. (Cal. Const., art. XIII D, § 6, subd. (b), par. (2); Gov. Code, § 53724.)

A tax ordinance or resolution may state a range of rates or amounts or provide that the tax rates or amounts may be adjusted for inflation pursuant to a clearly identified formula, or do both. If approved, the local government agency's governing board may thereafter impose the tax at any rate or amount consistent with the voter-approved range of rates or amounts and/or inflation adjustment formula. However, for a tax determined based on a percentage calculation, an inflation adjustment formula may not provide that the percentage will be adjusted for inflation. (Gov. Code, § 53739.)

Proposition 218 did not provide legal authority for the adoption of a special tax. (Cal. Const., art. XIII D, § 1; see also Gov. Code, § 53727.) A new or increased special tax must be authorized by some other law. For special districts, there must be specific statutory authority. (See, e.g., Mello-Roos Community Facilities District Act (Gov. Code, § 53311 et seq.), Irrigation District Law (Wat. Code, § 22078.5), County Water District Law (Wat. Code, § 31653), Municipal Water District Law (Wat. Code, § 72090.5).)

#### **Assessments and Standby Charges**

Article XIII D, section 4, regulates the levy of assessments. Proposition 218 broadly defined "assessment" as any levy or charge upon real property by a local government agency for a special benefit conferred upon the real property, and including special assessments, benefit assessments, mainte-

nance assessments, and special assessment taxes. (Cal. Const., art. XIII D, § 2, subd. (b).) Standby charges are deemed to be assessments and subject to the same procedural and substantive requirements as other assessments. (Cal. Const., art. XIII D, § 6, subd. (b), par. (4).)

Proposition 218 made the following key changes to assessment law: (1) it modified and firmed up the substantive standards for lawful assessments; (2) it required that assessments be supported by a detailed engineer's report; (3) it established new procedural notice, hearing and approval requirements, including a requirement for property owner approval by a new mailed ballot process, with ballots weighted according to a property's assessment burden and with approval based only on ballots returned to the agency; (4) it altered the burden of proof in legal actions to contest the validity of an assessment; and (5) it required the assessment of publicly owned property within the assessment district. (Cal. Const., art. XIII D, § 4.)

Assessments and standby charges are discussed in more detail in Chapter 3 of these guidelines.

#### **Property-Related Fees and Charges**

Article XIII D, section 6, regulates property-related fees and charges, which means any levy imposed on a parcel or upon a person as an incident of property ownership for a property-related service. (Cal. Const., art. XIII D, § 2, subd. (e).)

Proposition 218 made the following key changes to the law governing property-related fees and charges: (1) it established procedural requirements for 45-day notice to affected property owners, hearing, and an opportunity for defeat by major-

ity protest (however, unlike the assessment procedures, the fees and charges provision does not require a protest ballot to be provided to property owners; rather the agency determines a majority protest based on all affected property owners and parcels, and the protest is not weighted based on relative financial burden); (2) it required majority property-owner approval or two-thirds voter approval for new or increased fees and charges, except for water, sewer and refuse collection service charges, which are expressly exempt from voter approval; (3) it prohibited fees for general governmental services, including police, fire, ambulance and library services; and (4) it memorialized but did not significantly change the substantive standards for lawful fees and charges. (Cal. Const., art. XIII D, § 6.)

Property-related fees and charges are discussed in more detail in Chapter 2 of this publication.

### **Water Transfer Contracts**

Proposition 218 does not apply to water transfer contracts and prices paid for a water supply pursuant to a negotiated contract between a water agency seller and buyer. A water supply purchase price paid voluntarily by a buyer under the terms of a water supply contract is not a levy of a tax, assessment or property-related fee or charge as defined by articles XIII C and XIII D. Other limitations on water supply contracts are beyond the scope of these guidelines.

### **Expansion of Initiative Power**

Initiative is the power of the electorate to propose and enact amendments to the Constitution, state

statutes and ordinances. (Cal. Const., art. II, § 8.) Prior to Proposition 218, some courts had ruled that an initiative and referendum could not be used to reduce or affect local agency taxes, assessments and fees. (See, e.g., *City of Westminster v. County of Orange* (1988) 204 Cal.App.3d 623; *Fenton v. City of Delano* (1984) 162 Cal.App.3d 400.) In 1995, though, the Supreme Court distinguished between a voter referendum and initiative, finding that the referendum power expressly precluded a referendum on statutes and ordinances that impose a tax, but that no such limitation was imposed on the initiative power. (*Rossi v. Brown* (1995) 9 Cal.4th 688; see also *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, upholding the constitutionality of Proposition 62.)

Proposition 218 memorialized the holding in *Rossi* and expanded the scope of the initiative power: “[T]he 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 . . .” (Cal. Const., art. XIII C, § 3.) *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 confirmed that local voters have the authority to adopt an initiative to reduce water service charges; however, the court indicated that initiative authority is not without limits. The court also ruled that an initiative cannot require voter pre-approval of future new or increased service charges.

The Elections Code sets forth detailed initiative petition, signature, election and related requirements. (Elec. Code, §§ 9300–9323.)

Initiatives are discussed in more detail in Chapter 5 of this publication.

### Pre-Existing Taxes, Assessments and Fees

Articles XIII C and XIII D became effective November 6, 1996, the day after the election approving Proposition 218. (Cal. Const., art. II, § 10, subd. (a), and art. XIII D, § 5.) However, the act contains various deadlines for compliance, special rules for certain “window periods,” and “grandfather” provisions.

#### Taxes

Effective November 6, 1996, Proposition 218 applied to imposing, extending or increasing any general or special tax. (Cal. Const., art. XIII C, § 2.) Local government agencies that imposed, extended or increased general taxes without voter approval after January 1, 1995, but before November 6, 1996, were required to submit them for voter approval by November 6, 1998. (Cal. Const., art. XIII C, § 2, subd. (d).) Taxes imposed before January 1, 1995, are valid.

#### Assessments

Effective July 1, 1997, all new, increased and existing assessments must comply with article XIII D. Significantly, except for the “grandfathered” assessments discussed below, all assessments adopted before Proposition 218 were required to come into compliance with the new law by July 1, 1997. (Cal. Const., art. XIII D, § 5.)

The following assessments existing on November 6, 1996, were exempt from the new assessment procedures and approval process: (1) assessments

imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control; (2) assessments imposed pursuant to a petition signed by all property owners when initially imposed; (3) assessments that previously received majority voter approval; and (4) assessments whose proceeds are used exclusively to repay bonded indebtedness of which the failure to pay would violate the contract impairment clause of the U.S. Constitution. Subsequent increases in the assessments described in (1), (2) and (3) above are subject to Proposition 218. (Cal. Const., art. XIII D, § 5.)

#### Property-Related Fees and Charges

Effective July 1, 1997, all property-related fees and charges must comply with Proposition 218. (Cal. Const., art. XIII D, § 6, subd. (d).)

The applicability of Proposition 218 to property-related fees and charges in effect before July 1, 1997, is unclear. On one hand, article XIII D, section 6, subdivision (d) requires “all fees and charges” to comply beginning July 1, 1997. The use of the word “all” can be construed to mean both new and existing fees. In the Proposition 218 analysis prepared by the State Legislative Analyst, the Legislative Analyst construed section 6 to require that existing property-related fees and charges be repealed or in compliance by July 1, 1997.

On the other hand, the language in section 6, subdivision (d) (“all fees or charges”) is significantly different from the analogous assessment provision in article XIII D, section 5, which refers to “all existing, new or increased assessments.” This distinction can be cited in support of an argument that

the measure does not apply to pre-July 1, 1997, fees and charges.

### **Applicability to Pre-*Bighorn* Non-Compliant Service Charges**

Until the 2006 case, *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205, there was some uncertainty about the applicability of Proposition 218 to water service fees and charges. An earlier Court of Appeal case and Attorney General opinion had concluded that it did not apply to metered water rates. (*Howard Jarvis Taxpayers Association v. City of Los Angeles* (2000) 85 Cal.App.4th 79, 82-83; 80 Ops.Cal.Atty.Gen. 183 (1997).) In reliance on this authority, some water districts after July 1, 1997, approved new and increased water service charges without complying with Proposition 218. *Bighorn* rejected the commodity charge distinction in these earlier authorities and definitively ruled that all charges for water delivery are charges for a property-related service, whether calculated on the basis of consumption or imposed at a fixed rate.

Consequently, water service charges approved or increased after July 1, 1997, that did not comply with Proposition 218 are invalid. Even if years have passed, the service charges may not be beyond legal challenge. Statutes of limitations (the period of time within which a challenger must file a lawsuit) issues are addressed later in Chapter 4, Judicial Review.