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# Resolution Adopting New Water Rates Not Subject to Referendum

Calif. Court of Appeal Holds that Referendum Power Not Applicable to Local Water Rate Resolutions



A water agency's resolution adopting new rates for its water service fees is not subject to referendum, a California Court of Appeal held Friday. The California Constitution's grant of referendum power excludes local legislative enactments providing for tax levies and appropriations

for local governments' usual and current expenses. In *Howard Jarvis Taxpayers Association v. Amador Water Agency*, the court concluded that the term "tax levies" includes property-related fees, such as water service fees, and are not subject to referendum.

After complying with the procedural requirements of California Constitution article XIII D, section 6 (commonly referred to as Proposition 218), the Amador Water Agency adopted a resolution approving new water rates. In the resolution, the Agency Board of Directors concluded that the rate changes were necessary to cover ongoing and increasing costs of providing water service, including Agency operations and maintenance costs. Citizens submitted a referendum petition challenging the resolution. The Agency's clerk rejected the referendum petition and refused to place it on an election ballot on the grounds that the petition was confusing and the rate changes, while subject to challenge by initiative under Prop. 218, are not subject to referendum. The Association challenged the clerk's actions. The trial court concluded that the resolution was not subject to the referendum power and could only be challenged by initiative. The Third District Court of Appeal also determined that the resolution was not subject to referendum, but on different grounds.

Under California Constitution, article II, section 9, approved by the voters in 1911, "[t]he referendum is the power of the electors to approve or reject statutes or parts of statutes except ... statutes providing for tax levies or appropriations for usual current expenses of the State." Under article II, section 11, this general referendum exception also applies to local tax levies by legislative enactment.

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Courts have historically recognized that one — if not the chief — reason taxes are exempt from referenda is because they pose a significant threat to the State's and local governments' ability to raise funds needed for current operating expenses and interfere with fiscal power and policy administration.

The Court of Appeal acknowledged that, although constitutional law since the passage of Proposition 13 in 1978, Proposition 218 in 1996 and Proposition 26 in 2010 sharpened the distinctions between “taxes” and other exactions (e.g., assessments, fees or charges), those distinctions do not necessarily govern the interpretation of the Constitution's 1911 referendum provision. Rather, the court held that the meaning of the word “taxes” in one constitutional provision may differ from the same word in a different constitutional provision. Because the voters and the Legislature in 1911 understood the word “taxes” to include exactions such as assessments, fees or charges — including user service fees for the usual current expenses of government — the court concluded that the term “taxes” encompasses water service fees for purposes of the referendum power. An inclusive definition of “taxes,” the court reasoned, is consistent with the general purpose of the constitutional exceptions because a delay in water service fee implementation could disrupt essential government services. Accordingly, the court held that the Agency's resolution adopting its new water service fees is exempt from the referendum power.

*Best Best & Krieger LLP represented a group of water and municipal agencies as amicus curiae co-counsel on behalf of Amador Water Agency.*

If you have any questions about this case or how it may impact your agency, please contact the author of this Legal Alert listed to the right in the firm's [Public Finance](#) or [Special Districts](#) practice groups, or your [BB&K attorney](#).

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