

CLIENT SUCCESSES | JUL 01, 2019

BB&K Contributes to Successful Rate Ordinance Defense

Partner Kelly Salt Represented Public Agencies as Amicus Curiae



When Amador Water Agency adopted a new water rate ordinance to address drought shortages, the action became the subject of a referendum attempt. A California Court of Appeal, however, ruled in favor of the Agency on June 14, finding its resolution adopting new water service

fee rates was not subject to a referendum.

Best Best & Krieger LLP Partner Kelly Salt and co-counsel Daniel Hentschke appeared as amici curiae on behalf of Amador, representing the Association of California Water Agencies, the California Association of Sanitation Agencies, the California Special Districts Association, the California State Association of Counties and the League of California Cities.

The court agreed with arguments raised by amici that 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, and that, for purposes of the referendum power, the term "tax levies" includes property-related fees, such as water service fees.

This same Court of Appeal reached a different conclusion on the power of the referendum in *Wilde v. City of Dunsmuir*, which is under review by the California Supreme Court. The concurring opinion of Justice William Murray, Jr. in the *Amador* case explained that the court came to a different conclusion on the referendum power because the resolutions that were subject to challenge in each case were distinguishable. Also, certain legal arguments raised in the *Amador* case regarding the referendum power were not raised by the parties in the *Wilde* case. Ultimately, whether the Constitution limits the power of referendum to challenge resolutions and ordinances adopting new or increasing existing water rates and charges will likely be decided by the Supreme Court.

Learn more about how the Third District Court of Appeal evaluated the

People



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Agency's resolution in relation to California Constitution article XIII D, section 6 (commonly referred to as Proposition 218) in the BB&K Legal Alert "[Resolution Adopting New Water Rates Not Subject to Referendum.](#)"

The case is [Howard Jarvis Taxpayers Association v. Amador Water Agency.](#)