

Municipal Water Rates are Protected from Referendum Challenges

The California Supreme Court ruled that water rates and other local utility charges are considered "taxes" for the purpose of California Constitution Article II, Section 9 and therefore exempt from the referendum process. [Wilde v. City of Dunsmuir](#), No. S252915 (Cal. Supr. Ct., August 2, 2020). The City of Dunsmuir adopted new water rates to finance the replacement of the City's aging water storage tank and water mains. Plaintiff attempted to



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appellate court ruled in favor of plaintiff, reasoning that the provisions added by Proposition 218 define fees for water services as a "property-related fee," rather than a "tax." The appellate court determined that water rates should also be considered fees for the purpose of California Constitution Article II, Section 9, which exempts tax measures from referendum. The court rejected the appellate court's reasoning, holding that a water rate could be a tax for the purposes of the referendum tax exemption and a fee for the purposes of Proposition 218. The court found that Proposition 218's definitions of taxes and fees were limited in scope and did not alter the definition of a tax for the purposes of the Article II, section 9 exemption. Acknowledging that "tax" has no single-fixed meaning, the court relied on previous decisions holding that municipal services fees and charges constitute taxes in the context of other constitutional provisions. The court reasoned that the intent of the referendum tax exemption was to ensure that the referendum process does not disrupt essential government functions. As such,

the exemption should be interpreted to apply to the water rate increase because cities depend on such charges to provide water service to residents and to maintain essential infrastructure. Thus, while municipal water rates and other local utility charges may be challenged by other means, they are not subject to referendum.

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