

County Engineers Association of California

Flood Control and Water Resources Policy
Committee

Update on Senate Bill 231

March 28, 2018

Proposition 218 Property Related Fee

- Resides in the **Constitution**
- Requires an **Engineers Report**
- Requires **Notice** to all property owners
- Requires **Public Hearing** to consider fee
- Requires **Vote** of property owners EXCEPT fees for:
 - Water
 - Sewer
 - Refuse Collection

Senate Bill 231

- Does NOT change the Constitution!
- Changes “guidelines” to implement Prop 218 (Prop 218 Omnibus Implementation Act)
- Adds to definition of “sewer” to include storm water and drainage
- Uses statutory definition prior to Prop 218
- Adds to legislative intent that Stormwater should be exempt

SB 231 Strategy

- Desired outcome: Appellate Court ruling that “over-turns” Salinas decision (Stormwater is not exempt)
- A fee that benefits water/sewer could win in trial court, providing a stronger position at the Appellate Court
- If Appellate Court decision “opposes” Salinas then more cities/counties can use SB 231

How it Works

Supreme
Court

- Highest court in State
- Reviews Appellate Court cases, especially if two Appellate Courts differ in opinion

Appellate
Court

- Six Appellate Districts
- Reviews application of law in trial court case

Trial
(Superior)
Court

- One in each County
- Decisions based on testimony and evidence

SB 231 Working Group

- Established to help implement SB 231
- Looking for a test case with best chance of success
- Starting with Bay Area and then to LA
 - Not 6th District Court of Appeals (Santa Clara, San Benito, Monterey, Santa Cruz counties)
- Developing a communication plan
 - Inform cities/counties about SB 231
 - What cities/counties should consider to be a test case

Want to be a Test Case?

- Test Case Key Criteria
 - Nexus (overlap) with water or sewer service
 - Political will to approve a fee without a vote
 - Community support to pay a fee
 - Ability and resources to defend a lengthy lawsuit

What's Next?

- Conduct a Proposition 218 compliant election
- Adopt SB 231 fee with risk of legal challenge
- Wait for SB 231 court decision in 3-5 years (but....court decision may not be favorable)
- Build political/public support now!!
- Realign services to water, sewer or garbage
- Begin statewide ballot measure in 2019?

Questions?

