NAVÉ LAW

CONFIDENTIAL ATTORNEY COMMUNICATION

To: Dianna Mann
From: Scott Nave
Date: October 2, 2026
Re: Proposition 218 Requirements for Water and Sewer Standby Charges

BACKGROUND

This memorandum advises the Board on the requirements that apply to a standby charge, which Proposition 218 treats as an assessment, as distinguished from the District's usage fees and base rates. As reflected in the District's 2026 standby rate study, the District is evaluating a standby rate for unimproved residential lots that have water and/or sewer service available but are not currently connected, under a structure in which owners would elect into the rate, together with a proposed one-time charge (described in the study as a "Past System Infrastructure Maintenance Fee") to restore regular service to a lot that previously forfeited its connection. Both components should be tested against the framework below before adoption.

ISSUE

What substantive and procedural requirements must the District satisfy under Proposition 218 (California Constitution, Article XIII D) and applicable statutes in order to establish a new standby charge, or modify an existing one, for water and/or sewer service, and how do those requirements differ from the requirements that apply to the District's usage (commodity) fees and fixed base rates?

BRIEF ANSWER

A standby charge is constitutionally classified as an *assessment*, not a property-related fee, regardless of how the District labels it. (Cal. Const., art. XIII D, § 6(b)(4).) To adopt or modify one, the District must follow the assessment procedure of Article XIII D, Section 4, which requires (1) a detailed engineer's report, prepared by a registered professional engineer, establishing that each assessed parcel receives a special benefit and that its charge is proportional to that benefit; (2) mailed notice and an assessment ballot to the record owner of every affected parcel; (3) a public hearing held no sooner than 45 days after the mailing; and (4) a tabulation of the returned ballots, weighted by each parcel's proportional financial obligation, confirming that no majority protest exists.

By contrast, usage fees and base rates charged to parcels that are connected to, or have service immediately available from, the District's water or sewer system are property-related fees governed by Article XIII D, Section 6. Those charges require neither an engineer's report nor a ballot. Instead, the District must show that each charge does not exceed the proportional cost of providing service to the parcel, mail notice to record owners at least 45 days before a public hearing, and refrain from adopting the fee if written protests are submitted for a majority of the affected parcels. The dividing line is whether service is actually used by, or immediately available to, the parcel. A charge for service that is only potentially or prospectively available must proceed as an assessment. Two features

of the current proposal, the opt-in election and the reconnection charge, raise additional issues discussed in Part D below.

DISCUSSION

A. Classification: Standby Charges Distinguished from Base Rates and Usage Fees

Article XIII D, Section 6(b)(4) provides that no property-related fee may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property, and that fees based on potential or future use of a service are not permitted. The same subsection provides that standby charges, "whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4." This threshold classification controls which procedure applies, and it turns on the parcel's relationship to the system rather than on the label or billing method the District uses.

Standby Charge. A standby charge is a charge imposed on a parcel that is not connected to, and is not receiving service from, the District's water or sewer system, and to which service is not immediately available, but for which the District has built and holds capacity in reserve so that service can be extended if and when the parcel develops and connects. The charge compensates for the special benefit the parcel receives from that reserved capacity and helps recover the capital and maintenance costs of the facilities that make future service possible. The owner pays the charge whether or not the parcel is ever developed or connected.

Base Rate and Usage Fees. A base rate (also called a fixed, meter, or service charge) is the fixed portion of a customer's bill, charged each billing period regardless of how much water is used or wastewater is discharged. It recovers the fixed costs of serving the parcel, such as meter maintenance, billing, and system capacity committed to that account. A usage (commodity) fee, by contrast, varies with the volume of service the customer actually receives. Both are property-related fees under Section 6.

Unconnected Does Not Mean Standby. Because a standby charge and a base rate are both fixed charges that do not vary with consumption, they can look alike on a bill, and a parcel is not a standby parcel merely because it is vacant or not currently taking service. In *Paland v. Brooktrails Township Community Services Dist.* (2009) 179 Cal.App.4th 1358, the court held that a minimum charge imposed on a vacant parcel whose service was immediately available, though unused, was a Section 6 property-related fee and not a standby charge requiring Section 4 procedures. The District should therefore determine, lot by lot, whether service to each lot covered by the study is immediately available (for example, because a main and service lateral already serve the lot and it could take service without any extension of District facilities) or is only prospectively available. Lots in the first category may be charged a base rate under Section 6; only lots in the second category require the Section 4 assessment procedure.

Key Differences. The Board should keep the following differences between the two types of charges in view:

1. Basis: proportional special benefit, supported by an engineer's report (standby charge), versus proportional cost of service, supported by a rate study (usage fees and base rates);
2. Triggering condition: service available only through a potential future connection, typically requiring extension of a main or lateral (standby charge), versus service actually used or immediately available (usage fees and base rates); and
3. Protest mechanism: a mailed ballot weighted by financial obligation, with the charge defeated if weighted ballots in opposition exceed weighted ballots in support (standby charge), versus written protests counted one per parcel, with the fee defeated only if protests are submitted for a majority of the affected parcels (usage fees and base rates). The assessment ballot functions as a weighted vote of the owners who return ballots; water and sewer fees, by contrast, are expressly exempt from any property-owner or voter approval requirement. (Cal. Const., art. XIII D, § 6(c).)

A parcel should not be charged both a standby charge and a base rate for the same service for the same period, as doing so would raise a proportionality problem under both Section 4(a) and Section 6(b)(3). Once a lot connects, or service becomes immediately available to it, the lot should move from the standby charge to the Section 6 rate structure.

B. Substantive Requirements: Special Benefit and Proportionality

An assessment, including a standby charge, must satisfy each of the following requirements, and in any legal challenge the District bears the burden of demonstrating compliance. (Cal. Const., art. XIII D, § 4(f).)

1. **Special benefit.** Each assessed parcel must receive a special benefit from the availability of service, meaning a particular and distinct benefit over and above any general benefit conferred on real property in the District or on the public at large. (Cal. Const., art. XIII D, §§ 2(i), 4(a).)
2. **Separation of general benefit.** Only special benefits are assessable. The District must separate general benefits from special benefits, and any general benefit must be funded from other sources. (*Id.*, § 4(a).)
3. **Proportionality.** No parcel's assessment may exceed the reasonable cost of the proportional special benefit conferred on that parcel. The allocation must be based on the benefit each parcel receives, not on an equal division of cost or on the District's revenue needs. (*Ibid.*)
4. **Publicly owned parcels.** Parcels owned by public agencies are not exempt and must pay their proportional share unless the District demonstrates by clear and convincing evidence that they receive no special benefit. (*Ibid.*)
5. **Engineer's report.** The assessment must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. (*Id.*, § 4(b).) The report should (i) define the special benefit for purposes of the assessment; (ii) quantify, or otherwise defensibly separate, general benefit from special benefit; (iii) set forth the methodology allocating costs to each parcel in proportion to its special benefit; (iv) address publicly owned parcels individually; and (v) state the duration of the assessment.

C. Step-by-Step Procedure Under Article XIII D, Section 4

To establish a new standby charge or modify an existing one, the Board should take the following steps in sequence:

1. Identify every parcel proposed to be subject to the standby charge.
2. Retain a registered professional engineer to prepare the engineer's report described in Part B, including the proportional amount chargeable to each parcel and the duration of the charge (a single year, a term of years, or an ongoing charge).
3. Adopt a resolution of intention preliminarily approving the engineer's report and setting a date, time, and place for the public hearing.
4. Mail notice and an assessment ballot to the record owner of each identified parcel at least 45 days before the hearing. The notice must state the total amount chargeable to the entire district or improvement area, the amount chargeable to the owner's parcel, the duration of the charge, the reason for the charge, the basis on which the amount was calculated, and the date, time, and location of the hearing. It must also include a summary of the procedures for completing, returning, and tabulating ballots and a disclosure that the existence of a majority protest will result in the assessment not being imposed. (Cal. Const., art. XIII D, § 4(c); Gov. Code, § 53753.) The ballot must include the District's address for return of the completed ballot and a place for the owner to state his or her name, identify the parcel, and indicate support for or opposition to the assessment. (Cal. Const., art. XIII D, § 4(d).) The notice should also disclose that ballots will be weighted by each parcel's proportional financial obligation as set forth in the engineer's report.
5. Hold the public hearing no sooner than 45 days after the notice and ballots are mailed. Accept and consider all testimony and protests. Ballots may be submitted, changed, or withdrawn until the conclusion of public testimony at the hearing.
6. At the conclusion of the hearing, have an impartial person tabulate the ballots, weighting each by the proportional financial obligation of the affected parcel. (Cal. Const., art. XIII D, § 4(e); Gov. Code, § 53753(e).)
7. Determine whether a majority protest exists, meaning that weighted ballots submitted in opposition exceed weighted ballots submitted in support. Ballots not returned are not counted for or against the assessment. If a majority protest exists, the Board may not impose the charge. Document the weighting basis, tabulation procedures, and results in the administrative record.
8. If there is no majority protest, adopt the charge by resolution, in an amount not exceeding the amount stated in the mailed notice.
9. If the charge is to be collected on the property tax roll, timely file it with the county auditor for the applicable tax roll year, consistent with the collection provisions of the District's enabling act.
10. Retain the engineer's report, notice, ballots, tabulation, and hearing record. This administrative record is the District's primary defense if the charge is later challenged.

D. Special Considerations Raised by the Proposed Rate Structure

Rate study versus engineer's report. The District's 2026 study is a rate study. A cost-of-service rate study is the appropriate support for Section 6 fees, but it does not by itself satisfy Section 4(b). Before the standby component proceeds, the District should confirm that a registered professional engineer will prepare, or review and certify, a report meeting the requirements described in Part B.

Opt-in structure. A Section 4 assessment is imposed on all parcels the engineer's report identifies as receiving the special benefit; it is not something individual owners elect into. A standby rate that applies only to owners who affirmatively opt in risks two problems. First, it may not qualify as a valid Section 4 assessment at all, leaving the District without a clear legal basis for the charge. Second, if similarly situated parcels pay different amounts (or nothing) depending on each owner's election, the charge raises a proportionality problem under Section 4(a). Accordingly, the District should impose the standby charge on all parcels the engineer's report identifies as receiving the special benefit, without an opt-in election. Any voluntary component should be structured as a separate, non-assessment charge outside the Section 4 process.

Reconnection charge ("Past System Infrastructure Maintenance Fee"). Before adoption, the District should determine whether this one-time charge is (a) part of the Section 4 standby assessment; (b) a connection-type charge triggered solely by the owner's voluntary request to resume service, and thus outside Section 6; or (c) a property-related fee subject to Section 6. Characterization (b) rests on the reasoning of *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, which held that a connection fee is not "imposed as an incident of property ownership" when it is triggered by the owner's voluntary application for service. A charge characterized that way may nonetheless be subject to the cost-of-service and accounting requirements that Government Code section 66013 imposes on capacity charges.

Of these options, characterization as a voluntary connection-type charge is likely the most defensible for the District, provided the charge is calculated based on the actual cost of service, because it avoids both the ballot requirement of Section 4 and the majority-protest procedure of Section 6. The District should align its adoption procedure with whichever characterization it selects. It should also review any prior service-forfeiture agreements signed by affected owners, since those agreements may bear on whether the District can require a new charge to restore service.

Existing charges predating Proposition 218. If the District already imposes a standby charge that existed on November 6, 1996 (Proposition 218's effective date) and was imposed exclusively to finance the capital costs or maintenance and operation expenses of water or sewer facilities, that charge may be exempt from the Section 4 procedures under Article XIII D, Section 5(a). Any subsequent increase in such a charge, however, is subject to full Section 4 compliance, and an "increase" includes a change in methodology that raises the amount charged to any parcel. (Cal. Const., art. XIII D, § 5; Gov. Code, § 53750, subd. (h).) The District should confirm whether any existing standby charge qualifies for this exemption and, if so, whether the proposed changes would forfeit it.