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LITIGATION UPDATE
FOR

LEAGUE OF CALIFORNIA CITIES
2025 ANNUAL CONFERENCE AND EXPO

Prepared by

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TABLE OF CONTENTS

Page(s)

I. ATTORNEY-CLIENT PRIVILEGE AND GOVERNMENT EMPLOYEES

A. *Johnson v. Department of Transportation*, C099319, 109 Cal.App.5th 917 (Third District March 17, 2025), *review denied* (June 25, 2025).

Holding: The Court of Appeal affirmed the lower court's decision disqualifying plaintiff's attorney and three experts for violating a protective order barring the use of a privileged email. Of relevance to cities, the Court rejected the argument that attorney

351095.2

communications with low-level employees are not privileged because there is no attorney-client relationship.

Facts/Background: Plaintiff sued his employer Caltrans alleging employment claims for discrimination and harassment. An attorney for Caltrans sent an email about the litigation to plaintiff's supervisor, a lower-level employe. The supervisor sent an image of the email to plaintiff, who shared it with his attorney. Plaintiff and his attorney then shared the email with several retained experts and other individuals.

After extensive meet-and-confer efforts, Caltrans sought a protective order on attorney-client privilege grounds. Citing *Upjohn Co. v. United States* (1981) 449 U.S. 383, 391, the trial court found the email was covered by the attorney-client privilege because its dominant purpose was to obtain relevant information from the supervisor and prepare Caltrans's defense in the case and the email had a confidentiality warning at the end. The trial court found Caltrans did not waive the privilege through disclosure, delay in bringing the motion, or by other means.

Over the course of time, plaintiff's attorney disclosed the email and discussed the email with three retained experts and other individuals. Due to plaintiff attorney's noncompliance, Caltrans filed a motion to enforce the protective order and eventually to disqualify the attorney and the three experts. The trial court issued an order disqualifying the attorney and the three experts.

On appeal, the attorney challenged the trial court's disqualification order. Among other arguments, the attorney claimed the email was not protected by the attorney-client privilege, Caltrans waived any privilege through undue delay, and the court abused its discretion in ordering the drastic remedy of disqualification.

Analysis: The Court of Appeal rejected the attorney's arguments and affirmed the disqualification order. Public entities can claim attorney-client privilege, and attorney communications with agency employees are covered by the privilege if "the dominant purpose of the relationship between the parties to the communication" is to obtain relevant information from the employee to allow the attorney to prepare the case. (*Upjohn*, *supra*, 449 U.S. at pp. 391–393.)

The Court of Appeal found substantial evidence supported the trial court's conclusion the email was privileged because it was sent by an attorney representing Caltrans, the email involved legal advice or information, and the nature of the relationship between the attorney and the supervisor was that of a Caltrans attorney obtaining information relevant to litigation from a Caltrans employee. These facts satisfied Caltrans's prima facie burden of showing the communication was made in the course of an attorney-client relationship. (*Johnson, supra,* 109 Cal.App.5th at p. 936–937.)

The burden then shifted to plaintiff to show the email was not confidential or otherwise unprivileged. Plaintiff argued that communications with the attorney were not covered by the attorney-client privilege because the supervisor was only a low-level employee and Caltrans could not unilaterally create an attorney-client relationship with such an employee. Citing *Upjohn*, the Court of Appeal explained the email is privileged because it is important for entity lawyers to be able to exchange information with lower-level employees to adequately represent their clients. (*Id.* at p. 937.)

Finally, the Court of Appeal determined the supervisor's transmission of the email to plaintiff did not waive the privilege. (*Id*. at p. 940.) The privilege holder is Caltrans, as represented by its management. The supervisor is not Caltrans management. Nor is there any evidence Caltrans authorized the supervisor to disclose the email. Finally, contemporaneous communications from Caltrans's counsel indicated the supervisor did not have authority to waive attorney-client privilege on behalf of Caltrans. (*Id*.)

Impact: The decision confirms two key public agency attorney-client privilege issues. First, an agency attorney's communications with all employees, even lower-level employees, are privileged if the purpose of the communication is to prepare a case. Second, disclosure of a privileged communication by an employee does not waive the privilege unless the employee has authority to waive the privilege on behalf of the agency.

II. ELECTIONS

A. *San Diego Public Library Foundation v. Fuentes*, No. D084135, 111 Cal.App.5th 711 (Fourth District, Division 1, May 29, 2025).

Holding: The Court of Appeal found the San Diego County Registrar of Voters ("Registrar") acted arbitrarily in rejecting signatures due to address misspellings, illegibility, or nonstandard abbreviations when the voter registration record could be located and the identity of the signer could be verified. Court of Appeal rejected a strict application of Elections Code section 105 requiring the address be the "same" as what appears on the voter's registration affidavit. Partial dissent would have strictly applied section 150.

Facts/Background: In 2022, San Diego Public Library Foundation and the San Diego Parks Foundation began circulating a petition to collect signatures for the "Libraries and Parks Improvement Act" initiative to secure funding for libraries and parks in San Diego. They submitted over 111,000 signatures to the San Diego City Clerk for verification. The City Clerk forwarded the petition to the Registrar for signature verification.

The Registrar used a random sample to verify the signatures and determined the initiative did not have enough valid signatures to qualify for the ballot. The Registrar rejected a number of signatures because the signer misspelled their address, each individual letter of a street address was not legible, or letters in the street address were deleted or transposed. The Registrar also rejected several signatures because the voters abbreviated their street name or used an abbreviation for an address or address suffix which does not appear on the United States Postal Service's (USPS) list of standard abbreviations.

The proponents filed a petition for a writ of mandate seeking a finding the initiative was signed by enough validly registered City voters to qualify for the ballot. The trial court found proponents needed an additional 185 signatures to be deemed valid in order to trigger a full count. The court discussed some of the categories of signers the Registrar rejected, before concluding it was not required to address proponents' remaining contentions because proponents could not achieve the 185 signers which they needed.

Analysis: On the signature issue, the Court of Appeal found the Registrar of Voters should not have rejected the signatures based on misspellings and other issues with the addresses. Elections Code section 105 provides the residence address written on the petition must be "the same" as the address in the signer's voter registration record. The Court rejected the Registrar's strict interpretation of the section because it "fails to account for natural variations in a person's handwriting due to age, illness, or the hurried circumstances under which petitions are often signed." (*San Diego, supra,* 111 Cal.App.5th at p. 733.) The Court held the Registrar's approach would "disenfranchise less educated voters who might spell a street address phonetically … and voters with certain disabilities such as dyslexia, or individuals with poor handwriting." (*Id*.)

The Court of Appeal reasoned the purpose of comparing information on a petition with voter registration records is to determine if signers were registered voters on the date they signed the petition. (*Id*. at p. 734.) This can be accomplished "without letter-for-letter and word-for-word matches" with voter registration records. (*Id*.)

The Court of Appeal examined the question under *Wheelright v. County of Marin* (1970) 2 Cal.3d 448 and *Malick v. Athenour* (1995) 37 Cal.App.4th 1120. In *Wheelright*, the Supreme Court considered a clerk's rejection of signatures as not sufficiently similar to voter records. The Supreme Court held where the signature dissimilarities are so minor, rejection is an unreasonable or arbitrary act and the court may reject the clerk's determination. (*Wheelright, supra,* 2 Cal.3d at p. 456.) The *Wheelwright* Court acknowledged that while the clerk's duties are ministerial, they are not purely mechanical. (*Id.* at p. 455.)

In *Malick*, the Court of Appeal considered whether an elections official improperly disqualified signers who either illegibly printed their names or wrote them in cursive in the space designated for a printed name. (*Malik, supra,* 37 Cal.App.4th at p. 1124.) The Court rejected the claim that failing to print a name invalidated a signature. (*Id*. at p. 1126.) The court explained the purpose of requiring printed names is to assist verification. (*Id*.) But, insisting on perfectly separated printed letters does not further that goal and conflicted with the judicial policy of favoring the exercise of referendum rights. The Court ruled the automatic invalidation of such signatures, without any verification effort, was arbitrary as a matter of law. (*Id.* at p. 1127)

Based on *Wheelright* and *Malick*, the Court of Appeal found the Registrar used a mechanical approach to signature validation to improperly invalidate signatures. The Registrar's policy of looking at addresses "in isolation without even considering the key issue of whether the signature on the petition matches the voter registration form is arbitrary and contrary to law." (*San Diego*, 111 Cal.App.5th at p. 736.) The misspelled addresses, illegible handwriting, or nonstandard abbreviations does not automatically invalidate a signature when the registration record can be located and the identity of the signer can be verified. (*Id*. at p. 737.)

In a partial dissent, Presiding Justice O'Rourke disagreed to with the majority's ruling on the application of section 105. The dissent finds section 105's requirement the address be "the same" should be strictly applied. Unlike the signatures at issue in *Wheelright* and *Malick*, slight differences in the address requires the election official to make assumptions about whether the signer has moved to a slightly different street or address. This goes "beyond the official's ministerial duty and the law." (*Id*. at p. 740.)

Impact: City clerks and registrars must follow the ruling of the majority and not apply a hyper-technical reading of the requirements for initiative signatures. If the voter's registration information can be verified using the information on the petition, then the signature should be counted.

III. ADMINISTRATIVE EXHAUSTION

A. *Tesoro Refining & Marketing Co. LLC v. City of Carson*, B335686, 2025 WL 653916, (Second District, Division 4, Feb. 28, 2025) (unpublished); *review granted* S289952 (May 28, 2025).

Question for Review: Must a claimant for a local government tax refund comply with a local administrative review procedure prior to pursuing its remedies under the Government Claims Act (Gov. Code, § 810 et seq., "GCA")), or does the Act preempt such a requirement under the doctrine of field preemption? The trial court sustained Carson's demurrer and the Court of Appeal affirmed finding Tesoro failed to exhaust administrative remedies because it did not comply with the Carson Municipal Code requirements for tax refund claims.

Facts/Background: In November 2017, the Carson's voters approved Measure C which adopted the Oil Industry Business License Tax that taxed businesses refining and storing petroleum products in Carson. As part of the measure, Carson adopted Municipal Code provisions setting the procedures by which a taxpayer may obtain a tax refund. First, the Municipal Code required the taxpayer to seek relief from the City's Finance Director (Director). Second, if the taxpayer is dissatisfied with the Director's decision, the Municipal Code provides that any person may appeal any decision of the Director to the City Manager within 15 days of the decision. The Municipal Code states the City Manager's decision shall be final as to the City, but subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

Tesoro paid the tax. When Carson audited Tesoro's returns, they issued a Notice of Deficiency assessing substantial additional amounts. Tesoro timely paid the balance. Tesoro mailed a claim for damages to Carson's City Clerk, seeking a tax refund. Carson denied the claim. Tesoro then sued Carson alleging a single cause of action for a tax refund. Tesoro alleged that by collecting the amount assessed, Carson improperly taxed business activity that Tesoro undertakes outside Carson's boundaries in violation of the United States and California Constitutions and several California statutes.

The City demurred on the ground the complaint fails to state facts sufficient to constitute a cause of action because Tesoro was required to exhaust the administrative remedies set forth in the Municipal Code. Carson argued the complaint was barred because Tesoro did not allege it availed itself of the Carson administrative procedures or seek relief by filing an action for administrative mandate under Code of Civil Procedure section 1094.5. In opposing the demurrer, Tesoro alleged it did not need to comply with the Municipal Code administrative remedy procedures because they are preempted by the GCA. Tesoro alleged local governments, including charter cities, cannot adopt claims requirements not imposed by the GCA. The trial court sustained the demurrer with leave to amend finding Tesoro's failed to exhaust administrative remedies and rejecting Tesoro's preemption argument.

Analysis: The Court of Appeal affirmed. The Court ruled the question need not be analyzed under the standard four-part preemption analysis because the Supreme Court "has held 'the home rule protections in the Constitution do not limit the Legislature's authority to prescribe procedures governing claims against chartered local government entities.'" (*Tesoro* at *4 [quoting *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 627].) Instead, the Court of Appeal determined the only question for the Court is whether the Municipal Code administrative procedures conflict with the GCA. (*Id*.) The Court ruled Tesoro had the burden to demonstrate preemption. (*Id*.)

The Court of Appeal analyzed the question as one of field preemption after finding Tesoro could not raise contradiction preemption for the first time on appeal. The Court of Appeal found the Legislature did not expressly or impliedly fully occupy the field. The Court analyzed the Municipal Code provisions under the framework established by *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 which held that field preemption occurs when "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality." (*Tesoro, supra,* at p. *4.) The Court of Appeal then found Tesoro failed to argue the circumstances of the case presented any of the three scenarios and failed to carry its burden to demonstrate preemption.

Tesoro relied on three cases to support its preemption argument: *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48; *McWilliams, supra,* 56 Cal.4th 613; and *Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349. The Court of Appeal rejected each of the cases. The Court rejected dicta in a footnote in *Volkswagen* regarding GCA deadlines preempting local ordinances as not controlling because the Supreme Court did not analyze preemption legal principles in the footnote. (*Tesoro, supra,* at p. *6.) The Court rejected *McWilliams* and *Sipple* because the Courts deciding those cases failed to apply "the legal principles governing when a local ordinance is preempted by state law." (*Id*.)

Impact: The Supreme Court granted Tesoro's petition for review to consider the question of whether the GCA bars local claims presentation requirements and procedures under the doctrine of field preemption? The case is of statewide importance because reversal will end local government claims requirements and administrative procedures for tax refunds. Further, reversal may more broadly imperil all local government claims requirements and end administrative exhaustion requirements at the local government level in favor of the GCA's claiming requirements.

IV. MUNICIPAL FINANCE

A. *Patz v. City of San Diego*, 113 Cal.App.5th 225 (Fourth District, Division Two, July 30, 2025, *modified* August 27, 2025), *petition for review filed* (August 28, 2025) S292698.

Holding: The Court of Appeal affirmed the trial court's statement of decision and upheld the $79.5 million judgement against the City of San Diego. The majority ruled San Diego's tiered water rates violate Proposition 218 because San Diego failed to demonstrate that its rates charged no more than the "proportional cost of service attributable to the parcel." The majority further held San Diego violated Proposition 218 by charging single-family residential (SFR) customers tiered rates and all other customer classes a uniform rate. The Court remanded to reconsider the remedy because newly enacted Government Code section 53758.5 precludes a direct refund and instead mandates prospective rate reductions. The dissent rejected the majority's opinion on liability as well as the decision in *Coziahr v. Otay Water District* (2024) 103 Cal.App.5th 785 because they impose a rigid interpretation of the proportionality requirement that requires impossible levels of precision in rate setting.

Facts/Background: In 2013 and 2015 San Diego adopted tiered water rates for the SFR customer class and uniform rates for the other customer classes. Tiered rates charge increasing rates for higher levels of water use. San Diego's consultant used the Base-Extra Capacity method to allocate costs and calculate the rates using peaking factors. Using that method, all customer classes were allocated a portion of peak costs based on historic consumption data. The method allocates more costs to higher-volume users on the theory that those users should pay more due to the increased costs required to build, operate, and maintain a system built to the size required to meet peak demand, which is unnecessary for lower-use customers.

Majority: The majority held San Deigo's rates violate Proposition 218's proportionality requirement. The majority applied the substantial evidence standard of review to the trial court's statement of decision (which was written by Plaintiff's counsel and signed by the trial court) because it found the determination of whether San Diego's rates meet the proportionality requirement is "essentially factual" and San Diego's arguments that the rates comply with Proposition 218's proportionality requirement ask the Court to reweigh conflicting evidence. (*Patz, supra,* at pp. *25–26, fn. 7.)

San Diego argued that it need only show that it used reasonably accurate data to calculate tiered rates that reasonably reflect the proportional cost to deliver water service to each parcel. Like *Coziahr*, the majority rejected a reasonableness standard of proof without explaining what standard of proof a water agency must meet to carry its burden of proof. (*Patz, supra,* at *18–21; *Coziahr, surpa,* 103 Cal.App.5th at pp. 800–802.)

San Diego has two primary sources of water: cheaper local water and more expensive purchased water. While San Diego did not claim it calculated the tiered rates based on the cost of its different sources of water supply, the majority upheld the statement of decision because San Diego failed to support its tiered rates by proving that only cheaper local water is delivered to a customer's pipe (as opposed to co-mingled supply) when that customer is charged the lower Tier 1 rate. (*Patz, supra,* at p. *28.) The majority also faulted San Diego because it failed to show that cheaper local supply was sufficient to meet all Tier 1 demand. (*Id*.)

The majority rejected San Diego's use of the Base-Extra Capacity method and peaking factors, holding San Diego failed to demonstrate that rates calculated using the method reflect the "proportional cost of service attributable to the parcel." The majority held San Diego cannot use peaking factors to allocate peak costs to the customer classes or to the tiers without employing time-of-use technology to determine which customers use water at peak times. The use of historical data was not sufficient for this process. (*Patz, supra,* at pp. *30–32.) The majority also rejected the tiered rates because San Diego could not give a cost-based justification for where it set the breakpoints between tiers (i.e., why Tier 1 was set at 1-4 hcf and Tier 2 was set at 5-12 hcf). (*Id*. at p. *31–32.)

Citing *City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926, the majority found San Diego discriminated against SFR customers when it charged SFR customers tiered rates and other customer classes a uniform rate. The majority found it is discriminatory and a violation of Proposition 218 for different customer classes to pay different rates for the same volume of water. (*Patz, supra,* at pp. *32–33.)

Government Code section 53758.5 provides that a trial court finding a violation of Proposition 218 does not award a refund but should instead "credit the amount of the fee or charge attributable to the violation against the amount of the revenues required to provide the property-related service." The majority held that by its terms, section 53758.5 apples to the refund awarded against San Diego. (*Id.* at pp. *49–51.) The majority remanded to allow the trial court to amend the judgment to "require City to credit an award in accordance" with section 53758.5 and "to not allow the Class to enforce the refund award as a money judgment." (*Id*. at p. *51.)

Dissent: In a noisy 62-page dissent, Justice Menetrez rejected the trial court's statement of decision, the majority opinion, and *Coziahr*. The dissent explained these holdings imposed an unduly rigid interpretation of the proportionality requirement requiring voluminous and precise data before an agency can allocate costs to tiered rates. The dissent found the statement of decision was "based on nothing but red herrings and misrepresentations of the facts and the law." (*Id*. at p. *64.)

The dissent found San Diego used an appropriate methodology to allocate incrementally higher costs of more expensive water service to incrementally higher users. It found San Diego applied the methodology to the appropriate data to set the tiered rates. (*Id*. at p. *63.) The dissent found San Diego's cost calculations and allocations based on data other than hourly time-of-use data were reasonable. (*Id*. at p. *72.)

Finally, the dissent concluded nothing in Palmdale "could be interpreted as implying that Proposition 218 prohibits discriminating between customer classes by subjecting them to different rate structures without a cost-based justification for the different treatment" because that Proposition 218 "on its face" imposes no such requirement. (*Id*. at p. *73.) Similarly, the dissent found no Proposition 218 requirement for cost-based justifications for the tier breakpoints. (*Id*. at pp. *73–74.)

In a signal the case may be appropriate for review, the dissent recognized a split in the law between the majority and *Coziahr* which reject a reasonableness standard and the line of cases starting with *Griffith II*[1] which recognize the standard of proof to show

[1] *Griffith v. Pajaro Valley Water Mgmt. Agency* (2013) 220 Cal.App.4th 586 *(Griffith II); Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892; *Capistrano Taxpayers Ass'n, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493; *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363; *KCSFV I, LLC v. Florin Cnty Water Dist.* (2021) 64 Cal.App.5th 1015.

proportionality is to show "that, under a reasonable calculation and allocation of costs, rates do not exceed proportional costs." (*Id*. at pp. *57–59.)

Impact: San Diego filed a petition for review on August 28, 2025. Patz, as well as Coziahr, show the continued judicial trend toward requiring heightened levels of proof to support tiered rates. If the majority opinion stands, water agencies should move away from tiered rates calculated using the Base-Extra Capacity method unless they have detailed time-of-use data to support peak cost allocations.

B. *Rogers v. City of Redlands*, G063580, 112 Cal.App.5th 667 (Forth District, Division 3, June 4, 2025, *modified* June 30, 2025); *City pet. for review denied* (August 20, 2025).

Holding: The Court of Appeal affirmed the trial court's ruling the City's inclusion of costs to repair street damage caused by trash trucks in the trash rates constituted a charge for the use of Redland's streets prohibited by Vehicle Code section 9400.8. The Court of Appeal also upheld the trial court's application of Health and Safety Code section 5472 as limiting refunds for the overpayment of trash charges to those who paid the charges under protest.

Facts/Background: Redlands learned it was sustaining $3.5 million in street damage every year caused by heavy trash trucks. Redlands passed an ordinance adopted trash rates based on costs of service which included the annual cost of street damage caused by the utility's trash trucks. Plaintiff sued alleging the inclusion of costs to repair road damage constituted a charge for the use of Redlands' streets in violation of Vehicle Code section 9400.8. Section 9400.8 provides that, other than a permit fee for extra-legal loads, local agencies may not impose charges "for the privilege of using its streets or highways."

In phase one, the trial court found the Redlands' inclusion of the street repair costs in the trash rates constituted a charge for the privilege of using the City's streets violating section 9400.8. In phase two, the trial court concluded Health and Safety Code section 5472 limited refunds to those who paid under protest, denying the plaintiff class monetary relief.

Analysis: The Court of Appeal affirmed. Relying on *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, the Court of Appeal determined the Redlands' inclusion of the costs in the trash rate calculation fell within section 9400.8's

351095.2

prohibition because, no matter how the charges were collected, they were a fee for using the City's streets.

County Sanitation concerned a county biosolids impact fee of $3.37 per ton applied to land in the county charged to landowners to mitigate the damage biosolids trucks caused to the county roads. (*County Sanitation, supra,* 127 Cal.App.4th at p. 1571.) The Court of Appeal concluded section 9400.8 must be construed to prohibit a local agency from imposing any fees or charges on legal loads hauled on its roads, even though hauling such loads may cause damage beyond minor wear and tear. (*Id*. at p. 1622.) Additionally, the Court of Appeal found the biosolids impact fee was the type of fee prohibited by section 9400.8 even though it was not, on its face, assessed based on miles driven on roads and instead was based primarily on tons of certain biosolids applied to land in the county. (*Id*. at 1622–1623.) The Court of Appeal concluded, "[b]ecause the primary purpose of the biosolids impact fee was to collect funds based on the use of streets or highways located in Kern County, it violated ... section 9400.8." (*Id.* at p. 1623.)

The Court of Appeal in *Rogers* found *County Sanitation* to be persuasive on the application of section 9400.8. (*Rogers, supra,* 112 Cal.App.4th at p. 157.) The Court rejected the City's argument that Rogers did not pay a fee to use the roads but instead paid a charge for trash service. The Court held that because the trash rate incorporates a charge for street repair calculated based on the weight of the trash trucks, the inclusion of the charge constitutes a charge for the privilege of using City streets barred by section 9400.8. (*Id*.)

The Court of Appeal also rejected the City's argument that Proposition 218 and section 9400.8 should be harmonized to allow the City to recover the charge because Proposition 218 allows the City to recover the full cost of service from trash customers through rates. (*Id*. at p. 157–158 [*citing Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637 and *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914].) The Court of Appeal noted Proposition 218 states "[n]othing in this article or Article XIII C shall be construed to … [p]rovide any new authority to any agency to impose a tax, assessment, fee, or charge." When Proposition 218 passed in 1996, section 9400.8 had been in effect for six years. Therefore, Proposition 218 did not newly allow road use charges through rates that were barred by section 9400.8 before Proposition 218. (*Rogers, supra,* 112 Cal.App.4th at p. 158.)

As to the remedy, the Court of Appeal affirmed the trial court's ruling that Rogers and the class were not entitled to monetary relief for past trash charges paid because neither

Rogers nor any member of the class paid the trash charges under protest as required by Health and Safety Code section 5472. (Id. at p. 158–159.)

Impact: For City-owned water, sewer, and solid waste utilities, rates cannot recover the cost the City incurs to repair roads damaged by the utility's vehicles. If your rates recover these costs, they should be changed immediately. The plaintiff's attorney in *Rogers* is sewing utilities across the state for incorporating these costs in rates, and they are examining all city-utility rates searching for charges that violate section 9400.8.

C. *Gluck v. City and County of San Francisco*, A170087, 111 Cal.App.5th 769 (First District, Division Three, May 30, 2025).

Holding: The Court of Appeal affirmed the trial court's decision sustaining San Francisco's demurrer to the first three causes of action because San Francisco's combined wastewater and stormwater system is a "sewer," and therefore subject to the property-related fee exception to Proposition 218's voter approval requirement. The Court reversed the trial court's decision on the fourth cause of action finding the plaintiffs stated a claim the sewer rates violated Proposition 218's proportionality requirement by alleging the sewer rates were based solely on wastewater cost factors without consideration of stormwater cost factors.

Facts/Background: San Francisco operates a combined sewer system that collects and treats both wastewater and stormwater. Proposition 218 requires voter approval for property-related charges, except for "sewer, water, and refuse collection services." Prior to 2023, San Francisco charged sewer rates that recovered stormwater-related costs. The rates were set using wastewater cost factors (strength and flow) and not stormwater factors (permeable surface area).

In 2023, San Francisco conducted a new rate study that proposed a separate stormwater charge to recover stormwater-related costs split from the wastewater charge. The new stormwater charge would be based on parcel size and the parcel's permeable and impermeable area. Because the proposed rate structure changes were expected to have significant bill impacts on customers with parcels with large impermeable surface areas, San Francisco opted to phase in the new rates over seven years. New stormwater rates would fund one-seventh of all stormwater costs beginning in July 2023, with the proportion increasing each year until the new rates completely fund stormwater costs in the seventh year. During the ramp-up, the remainder of the combined wastewater and stormwater charges would be based on wastewater factors.

Plaintiffs filed a class action against San Francisco challenging the constitutionality of the sewer charges related to stormwater services. The first three causes of action argued stormwater services funded by the City's sewer charges were not "sewer" services covered by the exception to Proposition 218's voter approval requirement. The fourth cause of action argued the sewer rates violate the proportionality requirement of Proposition 218 to the extent San Francisco based the rates on wastewater factors in the past or during the ramp-up.

San Francisco demurred to all causes of action. The trial court sustained the demurrer without lave to amend. The trial court concluded the first, second, and third causes of action failed because San Francisco's combined sewer system provides "sewer" services which are not subject to voter approval under Proposition 218. The trial court then found the fourth cause of action failed because the crux of the claim was the incorrect assumption that the wastewater and stormwater systems are distinct.

Analysis: The Court of Appeal affirmed the trial court's judgment regarding the first three causes of action. The Court found that the term "sewer" as used in proposition 218 includes a combined wastewater and stormwater system. (*Gluck, supra,* 111Cal.App.5th at p. 783.) The Court relied on Public Utilities Code section 230.5 which defines "sewer system" expansively to include "all real estate, fixtures, and personal property … to facilitate sewage collection, treatment, or disposition for sanitary or ***drainage purposes***, including … ***outlets for surface or storm waters***, and any and all other works, property or structures necessary or convenient for the collection or disposal of sewage, industrial waste, ***or surface or storm waters***." (*Id*.) Therefore, the Court ruled the combined sewer system provides "sewer" services exempt from the voter approval requirement. (*Id*. at p. 790.)

The Court of Appeal reversed as to the fourth cause of action on proportionality. The Court held plaintiffs' allegation the sewer charges were not proportional did not fail as matter of law. The fact that San Francisco has a combined sewer system does not excuse it from adopting proportional rates that separately account for the different system costs as was done in the 2023 rate study. The Court emphasized the holdings in *Coziahr v. Otay Water* District (2024) 103 Cal.App.5th 785 and *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493 mandating an agency show its method of cost allocation produces rates that are proportional to costs. The Court found because San Francisco relied solely on wastewater cost factors to support charges for stormwater services without considering costs attributable to stormwater factors, plaintiffs fourth cause of action stated a claim San Francisco's sewer rates violate

Proposition 218's proportionality requirement. The case was remanded for further proceedings on the proportionality claim.

Impact: The case settled the question of whether a combined wastewater and stormwater system is a "sewer" system for purposes of Proposition 218. The case affirms and adds to the *Coziahr* and *Capistrano* line of cases finding a proportionality violation because the agency used "nonspecific data," assumptions, and industry standards, rather than "actual cost" to calculate rates. (*Gluck, supra,* 111Cal.App.5th at p. 792 [quoting *Coziahr*, 103 Cal.App.4th at p. 808].)