

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

San Francisco

MEMORANDUM

595 Market Street, Suite 1400
San Francisco, California 94105
415.597.7200
Fax 415.597.7201

To: Vince Wells, IAFF Local 1230

From: David L. Barber



Date: August 13, 2014

Re: Myths and Reality About the Proposed Fire-Prevention Assessment by the East Contra Costa Fire Protection District

The Contra Costa Taxpayers Association (“CoCoTax”) has made a number of assertions about the proposed fire-prevention assessment that would fund increased services in the East Contra Costa Fire Protection District. CoCoTax has asserted that the proposed assessment runs afoul of Proposition 218, which places certain limits on property assessments.

However, the proposed assessment appears to be designed to comply with the requirements of Proposition 218. Unlike police or EMS services, fire-suppression services provide both general and special benefits for property that is within a service area. The proposed assessment would fund only special benefits received by property within the district, not general benefits. It calculates the amount levied on each piece of property depending on a number of factors that determine how much special benefit that property receives.

In addition, contrary to CoCoTax’s claim, the district’s need for another revenue source is primarily due to declining property-tax revenues, not increased pension costs.

Myth: “Police and fire services are a general benefit” and thus cannot be funded through a special assessment.

Reality: Fire services provide both general and special benefits to property located within a fire district.

Prop 218 allows the special benefit portion to be funded by an assessment district that is subject to a vote by the property owners who would receive the special benefit.

Barry S. Jellison (CA)

Steven L. Stemerman (CA, NV)

Richard G. McCracken (CA, NV)

W. David Holsberry (CA, NV)

Elizabeth Ann Lawrence (CA, NV, AZ)

Andrew J. Kahn (CA, NV, AZ)

John J. Davis, Jr. (CA)

Florence E. Culp (CA, NV)

Kristin L. Martin (CA, NV, HI)

Eric B. Myers (CA, NV)

Paul L. More (CA, NV, MA)

Sarah Varela (CA, AZ, NV)

Sarah Grossman-Swenson (CA, NV)

Elizabeth Q. Hinckle (CA)

Yuval Miller (CA)

Kyrsten Skogstad (CA, AZ)

David L. Barber (CA)

Robert P. Cowell (1931-1980)

of counsel:

Philip Paul Bowe (CA)

McCracken, Stemerman
& Holsberry

1630 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Proposition 218, adopted by voters in 1996 and now part of the state constitution, places certain limits on assessments and other methods that local governments use to raise funds. In particular, if a local government district proposes an assessment on property within the district, the assessment has to receive the votes of at least 50% of the property that will be assessed. The assessment must only be used to pay for “special benefits” as opposed to “general benefits” to the entire community. And the assessment on each piece of property must be proportional to the special benefit that the property receives.

The ECCFPD’s proposed assessment is careful to separate out special from general benefits, as required by Prop 218. Only the special benefits from the proposed additional services are to be paid for using the assessment funds.

Fire-suppression services obviously provide some general benefits to the community. The Engineer’s Report that evaluates the proposed assessment specifically separates out the general benefits that come from fire-district funding, including EMS, services to motorists passing through the assessment area, and other services.

But according to the Engineer’s Report, the main benefits that will come from increased fire-suppression services are special benefits to the properties within the district. This makes sense, because the main purpose of fire-suppression services is to prevent property damage by fire. The Engineer’s Report identifies the special benefits that would accrue to property within the district as a result of increased fire-suppression services. These include greater fire protection for property that is near the two fire stations that will be kept open with assessment funding, a more timely and direct response to fire calls (resulting in decreased damage when a fire occurs), and increased fire prevention due to increased education, inspections, and code enforcement.

Fire Services Are Different From Police Services

CoCoTax is being misleading by talking about police assessments and Prop 218, because what’s at issue here is an assessment for fire suppression.

Police services and fire-suppression services are treated differently under Prop 218. According to the Legislative Analyst’s Office report on Prop 218 (December 1996), police services are unlikely to meet Prop 218’s definition of “special benefit.” By contrast, the same report notes that fire assessments that existed when Prop 218 was passed would probably have to be *modified* to separate out special from general benefits. ECCFPD’s proposed assessment separates out special from general benefits and only funds the special benefits with assessment money.

Emergency Medical Services are similar to police services, since they do not give an appreciable special benefit that is tied to property parcels but rather benefit any person who happens to have a medical emergency while within the service area. The ECCFPD’s Engineer’s Report specifically sets aside any consideration of EMS funding for this reason. By contrast, fire-suppression services provide both general and special benefits. Thus, under Prop 218, the

special benefits can be paid for using an assessment, as long as the assessment of each property parcel is proportional to the amount of special benefit received.

Myth: Funding fire services in part via a benefit assessment would violate Prop 218.

Reality: Prop 218 allows property owners who receive a special benefit to vote on an assessment to fund that benefit. Fire-suppression services provided by ECCFPD create both special and general benefits. The proposed assessment only covers the cost of the special benefits. CoCoTax is using misleading and incorrect legal arguments to try to deny property owners the right to vote on whether to tax themselves to provide vital fire services.

One decision from the California Court of Appeal overturned an assessment that was to fund fire services.¹ However, the California Supreme Court set aside that decision without issuing its own opinion on the issue, and no other California court has ruled on the question of funding fire-suppression services by means of an assessment. Thus, there is no binding case law that prevents using an assessment to fund additional fire-suppression services that provide special benefits to property within the assessment district. Furthermore, the assessment that was at issue in the *West Point* case was significantly different from the assessment proposed by ECCFPD: according to the Court of Appeal, it conferred only general benefits, and it was not assessed proportionately.

The Engineer's Report for the ECCFPD carefully separates out the special from the general benefits. It also uses an evidence-based formula for determining *how much* special benefit each property parcel would receive, based on factors such as property use, fire-sprinkler installation, distance from fire station, and whether the property receives any fire-protection benefit funded directly by the state. Thus, the assessment is designed to comply with the requirements of Prop 218.

Myth: "Spiraling pension costs" are forcing the district to cut fire service.

Reality: Declining revenues are forcing the district to cut fire service. The property taxes that fund most of the district's fire-suppression activities are capped by Proposition 13, passed in 1978. Current budget projections by the district show revenues falling from \$13.2 million in 2013-14 to just \$10.2 million in 2015-16, and then rising very slowly after that.

CoCoTax expects the district to perform a miracle: keep the same level of fire services while revenues drop by millions of dollars a year. The reality is that given current revenue projections, the district will have to cut services. The proposed assessment would increase services over the baseline budget projection and would provide additional benefits to properties within the district.

¹ *Concerned Citizens for Responsible Government v. West Point Fire Protection District* (2011) 196 Cal.App.4th 1427.