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No. S243360

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IN THE  
SUPREME COURT OF CALIFORNIA

SUPREME COURT  
**FILED**

JAN 11 2013

EUGENE G. PLANTIER  
AS TRUSTEE OF THE PLANTIER FAMILY TRUST et al.,  
*Plaintiffs and Appellants,*

Jorge Navarrete Clerk

v.

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Deputy

RAMONA MUNICIPAL WATER DISTRICT,  
*Defendant and Respondent.*

After a Published Decision by the Court of Appeal of the State of California  
Fourth Appellate District, Division One  
*Case No. D069798*

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On Appeal from the Superior Court of the County of San Diego  
The Honorable Timothy B. Taylor, Judge  
*Case No. 37-2014-00083195-CU-BT-CTL*

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**ANSWER BRIEF ON THE MERITS**

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## I. INTRODUCTION

The issue before the Court is whether section 6, subdivision (a) of article XIII D of the California Constitution, which was added by the voters through Proposition 218 in 1996, creates an administrative remedy that must be exhausted by a fee-payor seeking to challenge the methodology of an existing property-related fee under section 6, subdivision (b) of article XIII D.

It does not.

Article XIII D “sets forth procedures, requirements and voter approval mechanisms for local government assessments, fees and charges.” (Cal. Const., art. XIII D.) Plaintiffs’ claims implicate a single subdivision of section 6 of article XIII D: subdivision (b), which sets substantive limitations for existing and new property-related fees. The District here asks the Court to establish a new rule that would require any fee-payor challenging a fee under subdivision (b) to first lodge a protest to an increase to the fee under a separate provision, section 6, subdivision (a). In the 22 years since Proposition 218 was adopted by California voters, neither this Court nor any court of appeal has interpreted Proposition 218 as the District advocates.

Subdivisions (a) and (b) contain their own voter-approved headings that were not added by West’s or Deering’s. They are part of the California Constitution. The heading for section 6, subdivision (a), reads: “Procedures for New or Increased Fees and Charges.” (Emphasis added.) Subdivision (a) requires agencies seeking to impose a new fee, or increase an existing fee, to provide notice with specific information about the new

or increased fee, the opportunity to submit written protests, and a hearing to tabulate protests to determine whether a majority protest exists.

The heading for section 6, subdivision (b) reads: “Requirements for Existing, New or Increased Fees and Charges.” (Emphasis added.) Subdivision (b) applies to fees, like the District’s sewer service charge, that were in effect at the time of Proposition 218’s passage, as well as new and increased fees. Under subdivision (b), property-related fees cannot exceed the cost of providing service, cannot be for some purpose other than providing service, and must be proportional to a parcel’s use of the service.

The notice and hearing procedure of section 6, subdivision (a) only applies when an agency seeks to impose a new, or increase an existing, property-related fee. Section 6, subdivision (a) does not create an administrative remedy that must be exhausted in order to challenge whether an existing property-related fee meets the substantive requirements of section 6, subdivision (b). That is apparent from the plain language of section 6.

This plain language interpretation is confirmed by the incongruous results that flow from attempting to graft a purported exhaustion requirement from subdivision (a) onto a challenge under subdivision (b). If a fee-payor must participate in a subdivision (a) hearing in order to challenge compliance with subdivision (b), a government agency can avoid or defer challenges under subdivision (b) by simply not triggering the requirement for a hearing under subdivision (a). That is antithetical to Proposition 218, which was designed to increase voter power and control over local agencies’ attempts to impose new, or increase existing, property-related fees.

Moreover, section 6, subdivision (a) does not create an administrative remedy because it does not include a mechanism for the submission, evaluation, or resolution of property owner protests. At most, subdivision (a) provides property owners a veto right over any new or increased property-related fees, but only if a majority threshold is met. Although an agency is required to “consider” a protest, this means nothing more than counting the number of protests to determine whether they meet the majority threshold.

The District’s claim that Plaintiffs’ failure to participate in its rate increase hearings deprived the District of the opportunity to review, evaluate and consider Plaintiffs’ position before this dispute reached the courts, (*e.g.*, Pet. Brief at p. 14, is false. The District’s Legislative Code sets forth an administrative remedy that must be exhausted before challenging any provision in the Legislative Code, including the provision that establishes the sewer service charge at issue here. It is undisputed that Plaintiffs exhausted this administrative remedy by submitting a pre-filing administrative claim outlining the factual and legal bases for their claims. The District’s Engineer fully reviewed and analyzed this administrative claim before the District denied it, leading to this lawsuit.

To the extent the Court finds that subdivision (a) creates an administrative remedy that must be exhausted before pursuing a claim under subdivision (b), the case should still be remanded for a decision on the merits of Plaintiffs’ claims. Plaintiffs’ failure to serve a protest or appear at the District’s rate increase hearings is excused under the futility doctrine, and Plaintiffs are entitled to rely on the actions of other class members



who did protest the rate increases.

Plaintiffs respectfully request that this Court reject the District's attempt to transform Proposition 218 from an initiative designed to empower voters to a tool for government agencies to avoid judicial scrutiny of property-related fees and charges. The Court of Appeal's opinion should be affirmed.

## **II. STATEMENT OF THE FACTS AND PROCEDURAL BACKGROUND**

### **A. Proposition 218**

California voters adopted Proposition 218, the "Right to Vote on Taxes Act, in November 1996. In adopting this measure, the people found and declared that:

[L]ocal governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of the voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

(*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 647, 640 [119 Cal.Rptr.2d 91], citations omitted.) Proposition 218 added articles XIII C and D to the California Constitution.

Article XIII D "sets forth procedures, requirements and voter approval mechanisms for local government assessments, fees and charges." (Cal. Const., art. XIII D.) Plaintiffs' claims arise under subdivision (b) of section 6 of article XIII D. Section 6 of article XIII D applies to fees and charges for property-related services like the District's sewer service charge, which is at issue here. Article XIII D shifts the burden

of proving the validity of any property-related fee or charge to the government agency. (Cal. Const., art. XIII D, § 6, subd. (b)(5).)

Subdivision (a) of section 6 establishes “Procedures for New or Increased Fees and Charges.” When an agency seeks to either impose a new fee, or increase an existing fee, it must provide notice to property owners of the proposed fee or charge. The agency must conduct a public hearing after the notice. “At the public hearing, the agency shall consider all protests against the proposed fee or charge.” (Cal. Const., art. XIII D, § 6, subd. (a)(2).) If a majority of property owners protest the new or increased fee, the agency cannot implement it.

Subdivision (b) establishes “Requirements for Existing, New or Increased Fees and Charges.” This subdivision imposes substantive limitations on all property-related fees, including those in existence when the voters passed Proposition 218. Revenues from a property-related fee cannot exceed the funds required to provide the property-related service, and cannot be used for any other purpose than providing the service. The amount of a fee imposed on any parcel cannot exceed the proportional cost of providing service to that parcel. The service must be actually used by, or immediately available to, the parcel. (Cal. Const., art. XIII D, § 6, subd. (b).)

The Proposition 218 Omnibus Implementation Act, Government Code sections 53750 *et seq.*, specifies when an agency decision results in an “increase” to a property-related fee or charge that would trigger a hearing under section 6, subdivision (a). (Gov. Code § 53750, subd. (h).) An increase occurs when an agency 1) “increases the

applicable rate used to calculate” the fee or charge; or 2) revises the methodology for calculating the fee in a manner that “results in an increased amount being levied on any person or parcel.” (Gov. Code § 53750, subd. (h)(1).) The Proposition 218 rate increase hearings that the District held during the relevant period here related to an increase to the applicable rate, and did not involve any change to the methodology for calculating the sewer service charge. (6 AA 1150; 7 AA 1342; 7 AA 1407.)

The District correctly noted in its Opening Brief that “Proposition 218 says nothing about procedural or jurisdictional prerequisites to suit, such as the exhaustion doctrine.” (Pet. Brief at p. 18.) Although Proposition 218 expressly shifted the burden of proof of the validity of a fee to government agencies, it contains no language establishing any new or additional procedures that would constitute a jurisdictional prerequisite to filing a lawsuit.

**B. Factual Background**

**1. The District’s EDU-Based Sewer Service Charge**

The District is a government agency subject to the requirements of article XIII D. (8 AA 1549.) The District provides water and sewer service to residents and businesses in the unincorporated area of Ramona, northeast of the City of San Diego. (8 AA 1549.) This lawsuit challenges the sewer service charge that the District imposes on parcels connected to its wastewater system. (8 AA 1558-59.)

The District’s sewer service charges are based on an Equivalent Dwelling Unit (“EDU”) system. (7 AA 1246-47.) The District defines an EDU as “a measure where one

unit is equivalent to two hundred gallons/day of sewage, with suspended solids of two hundred milligrams per liter, and BOD [biochemical oxygen demand] of two hundred milligrams per liter.” (7 AA 1242; 7 AA 1263.) The District assigns each parcel connected to the system an EDU value, which forms the basis for calculating the sewer service charge for a property. (7 AA 1246; 7 AA 1267.) The EDU value is arbitrarily assigned in the District’s Legislative Code based on the occupancy type of the establishment on the parcel. (7 AA 1246-49; 7 AA 1267-69.) Although purporting to be based on gallons/day of sewage, the EDU value assigned to a parcel has no relationship to the actual water or sewer usage of the parcel. For instance, a single-family residence is always assessed one EDU regardless of the number of occupants, size of the home, or whether the property is vacant for extended periods of time. (7 AA 1247; 7 AA 1268.)

**2. Plaintiff Plantier’s Objections to the District’s EDU-Based System**

In 2012, the District sent Plaintiff Plantier a letter out of the blue, seeking more than \$100,000 in allegedly past due sewer service charges, connection fees, and mitigation fees. (6 AA 1064-66.) At that time, Mr. Plantier’s property had been connected to the sewer and operated as a restaurant for more than two decades, and Mr. Plantier had timely paid sewer service charges for 2.0 EDUs, as assessed and billed by the District. (5 AA 1000-02.)

The District falsely claimed that Mr. Plantier had changed the use of his property. (8 AA 1468.) The District also claimed that Mr. Plantier should have been paying 6.8 EDUs for sewer service, rather than the 2.0 EDUs the District had charged him since

he purchased the property in 1998. (6 AA 1066.) The District then billed him for past sewer service charges based on its reassessment, even though its Legislative Code expressly prohibits this. (6 AA 1066-17; 7 AA 1269-70.)

Mr. Plantier objected to the District's EDU-based system on multiple occasions. On July 23, 2012, Mr. Plantier's counsel submitted a letter to the District listing Mr. Plantier's grievances. (8 AA 1468-69.) Mr. Plantier claimed that the District's assessment of EDUs based upon building square footage was "arbitrary and discriminatory" because no correlation existed between dwelling unit square footage and sewer usage. (8 AA 1468.) A few weeks later, on August 16, 2012, Mr. Plantier met with the District's general manager, David Barnum, its District Engineer, Michael Metts, and a member of the District's engineering staff, Ricardo Soto, and questioned the District's practice of assigning EDUs based on square footage rather than actual water use. (8 AA 1472-74.)

Mr. Plantier sent a letter to the District's Board President on August 22, 2012, requesting a formal hearing with its Board of Directors to challenge the District's reassessment of EDUs for his property. (8 AA 1470-71.) He also sent a letter to Mr. Barnum memorializing the issues discussed at the August 16 meeting, particularly his objection to the EDU methodology for setting sewer service charges. (8 AA 1472-74.)

On September 10, 2012, Mr. Barnum responded to Mr. Plantier's letter, agreeing to put his issue on the agenda for a future Board meeting. (8 AA 1475.) Two months later, on November 13, 2012, Mr. Plantier appeared at a District Board meeting to object

to the EDU system. (5 AA 1013-14; 6 AA 1139-43.) The meeting was continued to December 11, 2012, because Mr. Plantier was not notified about it until that morning. (5 AA 1013-14.)

In advance of the rescheduled Board meeting, on December 7, 2012, a consumer advocacy group sent a letter on Mr. Plantier's behalf to the District's Board making the same arguments at issue in this litigation: the District's sewer service charge violates Proposition 218. (8 AA 1476-80.) Specifically, this letter claimed that "[b]illing customers for projected wastewater use that exceeds their actual wastewater use violates both Proposition 218's proportionality requirement and its prohibition on collecting revenues that exceed the cost of providing a property related service." (8 AA 1478.)

Days later, Mr. Plantier attended a regular meeting of the District's Board where he again protested the District's EDU system as a violation of Proposition 218. (6 AA 1144; 6 AA 1147-49.) Representatives from the consumer advocacy group also addressed the Board regarding the points raised in its letter. (6 AA 1148.)

Following that Board meeting, the District's counsel responded to the December 7 letter, and denied each of Mr. Plantier's claims. (8 AA 1542-54.) The letter stated that a memorandum addressing Mr. Plantier's specific concerns would be included in a future Board meeting agenda. (8 AA 1544.) Mr. Plantier never heard from the District about that future meeting. (5 AA 1019-20.)

On November 21, 2013, Mr. Plantier and Plaintiff Progressive Properties submitted an administrative claim to the District's Board in accordance with Water Code

section 71735, Government Code section 945.5, and the District's Legislative Code sections 7.52.170 and 7.54.170. (8 AA 1546-65.) Their written claim attached a draft complaint alleging that the District's EDU methodology violated Proposition 218, and that Plaintiffs and a class of fee-payers were entitled to a refund of unlawful sewer service charges. (8 AA 1547-65.)

The District's Engineer, Michael Metts, reviewed the administrative claim in detail and evaluated its merits by calculating whether the 6.82 EDU assignment for Mr. Plantier's restaurant bore a rational relationship to his actual water use. (5 AA 1047-51; 8 AA 1493-541.) Based on Mr. Plantier's water use from 2012 to 2013, Mr. Metts calculated an EDU value of 3.92, almost half of what the District was charging Mr. Plantier under the EDU schedule in its Legislative Code. (5 AA 1050-51; 8 AA 1494.) Nonetheless, the District rejected Plaintiffs' claim and allegations contained therein on January 6, 2014. (8 AA 1566.)

### **C. Procedural Background**

Plaintiffs filed suit against the District, on behalf of themselves and all others similarly situated, alleging the same causes of action set forth in their administrative claim. (1 AA 0001-11.) Plaintiffs alleged that the District's sewer service charges did not meet the requirements of article XIII D, section 6, subdivision (b) of the California Constitution, because of the EDU methodology. (1 AA 0005-08.) Plaintiffs seek a declaratory judgment that the District's sewer service charge is unlawful, and a refund of all unlawfully collected charges. (1 AA 0007-08.)

Plaintiffs moved for class certification on January 30, 2015. (1 AA 0023-26.) In opposition to that motion, the District argued that Plaintiffs failed to exhaust administrative remedies because Plaintiffs did not submit a written protest or appear at any of the hearings that the District had held to approve increases to the sewer service charge pursuant to section 6(a) of Proposition 218. (1 AA 0197-98.)

The trial court granted class certification, finding that “Plaintiffs have shown they have exhausted their administrative remedies.” (3 AA 0534.) The trial court certified the following class: “Ramona Municipal Water District customers who have paid a Sewer Service Charge on or after November 22, 2012.” (3 AA 0532.)

On September 10, 2015, the District sought bifurcation of its affirmative defense of failure to exhaust administrative remedies, based on the same arguments it raised in opposition to the motion for class certification. (3 AA 0552-53.) Plaintiffs opposed bifurcation, pointing out that the trial court already decided this issue when it certified the class. (3 AA 0692-694.) Despite its prior ruling, the trial court granted the District’s request, holding that whether Plaintiffs exhausted their administrative remedies was a threshold issue that bore upon the viability of their claims. (4 AA 0832.) The trial court ruled that the District’s exhaustion defense would be tried first. (4 AA 0837.)

Phase I of a bench trial commenced on November 2, 2015, and lasted two days. (8 AA 1642.) The trial court published its tentative decision on November 3, 2015, finding 1) that article XIII D, § 4 of the California Constitution imposed an independent



exhaustion requirement,<sup>1</sup> and 2) Plaintiffs failed to satisfy that requirement. (8 AA 1635.) The trial court concluded that Plaintiffs' failure to submit written protests or appear at the District's rate increase hearings barred their suit. (8 AA 1653; 8 AA 1655.) The trial court entered judgment in favor of the District on December 1, 2015. (8 AA 1639-44.) On January 27, 2016, Plaintiffs filed a timely notice of appeal. (8 AA 1656-59.)

The Fourth District Court of Appeal reversed the trial court's judgment on June 13, 2017. The Court of Appeal correctly held that Plaintiffs' lawsuit is not barred for failure to exhaust because their "substantive challenge involving the method used by District to calculate its wastewater service fees or charges is outside the scope of the administrative remedies [of section 6, subdivision (a)], and because, under the facts of this case, those remedies are, in any event, inadequate." (*Plantier v. Ramona Municipal Water Dist.* (2017) 12 Cal.App.5th 856, 859-60.)

### **III. STANDARD OF REVIEW**

The doctrine of administrative remedies requires that "[w]here an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 [190 P.2d 942].) Under this rule, resort to the administrative forum is a jurisdictional prerequisite to judicial review. (*Id.* at p. 293.) Exhaustion of administrative remedies allows an administrative agency the opportunity to redress an

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<sup>1</sup> As pointed out by the Court of Appeal, the trial court referred to the wrong provision of Proposition 218 in its Order. The Court of Appeal addressed this by basing its opinion on article XIII D, section 6, the correct provision.

alleged wrong, thereby rendering litigation unnecessary and promoting judicial economy. (*Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 482 [11 Cal.Rptr.3d 776].)

Application of the doctrine is generally a legal question. (*Coastside Fishing Club v. California Fish & Game Com.* (2013) 215 Cal.App.4th 397, 414 [155 Cal.Rptr.3d 426].) Where, as here, the facts are not in dispute, an appellate court reviews de novo whether an action is barred by a failure to exhaust administrative remedies. (*Wallich's Ranch Co. v. Kern County Citrus Pest Control Dist.* (2001) 87 Cal.App.4th 878, 883 [104 Cal.Rptr.2d 875], citing *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799 [35 Cal.Rptr.2d 418, 883 P.2d 960] ["When the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court. [Citations.]".])

#### **IV. THE COURT OF APPEAL'S HOLDING SHOULD BE AFFIRMED**

##### **A. The Plain Language of Article XIII D, Section 6 Supports the Court of Appeal's Holding**

Proposition 218 was intended to limit local government revenue and enhance fee-payer consent for new or increased property-related fees. (*Greene v. Marin County Flood Control & Water Conservation Dist.* (2010) 49 Cal.4th 277, 285 [109 Cal.Rptr.3d 620, 231 P.3d 350].) The provisions of Proposition 218 should be construed to effectuate that intent. (*Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Comm.* (2012) 209 Cal.App.4th 1182, 1199 [147 Cal.Rptr.3d 696].) Courts follow principles of statutory construction in interpreting initiative measures. (*Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006, 1010 [96 Cal.Rptr.2d 246].) Like a

statute, the ordinary meaning of the words of an initiative measure govern a court's interpretation. (*Id.*)

The plain language of section 6 of article XIII D demonstrates that the voters did not intend for the procedure set forth in section 6, subdivision (a) to apply to a challenge to the method for calculating an existing fee under subdivision (b). Subdivision (a) only applies to new fees, or increases to existing fees. An increase is defined under Government Code section 53750(h)(1) as either an increase in the rate, or a change in methodology that results in an increase. The rate increase hearings that the District held in 2013, 2014, and 2015 sought approval only of an increase in the rate, not any change in methodology. (6 AA 1150; 7 AA 1342; 7 AA 1407.)

Article XIII D expressly shifts the burden of proving the validity of a fee to the agency, but does not say anything about adding to or changing existing administrative remedies. As the District noted in its Opening Brief, the fact that Proposition 218 explicitly changes the burden but is silent on jurisdictional prerequisites to challenging a fee indicates that the voters did not intend to change existing exhaustion requirements, such as Government Code section 945.4 and the District's own Legislative Code.

The public notices for the District's rate increase hearings confirm that the hearings were limited to consideration of the proposed increase. The notices state that the District will "consider adopting increases in rates and fees for water and wastewater." (6 AA 1150 [2013]; 7 AA 1342 [2014]; 7 AA 1407 [2015].) The notices state that property owners or tenants "may submit a written protest *to the proposed increases.*"

(6 AA 1152 [2013]; 7 AA 1344 [2014]; 7 AA 1407 [2015] [emphasis added].) The District only required that a fee-payor state the fact of a protest. It did not require any explanation of the reasons for the protest:

Any written protest must: (1) state that the identified property owner or tenant is opposed to the proposed water rate and/or wastewater service fee increases; (2) provide the location of the identified parcel (by assessor's parcel number or street address); and (3) include the name and signature of the property owner or tenant submitting the protest.

(6 AA 1152 [2013]; 7 AA 1344-45 [2014]; 7 AA 1408 [2015].) None of these hearings sought public comment or input regarding the EDU methodology underlying the sewer service charge, or placed “the entirety of the fee structure” at issue, as the District claimed in its Opening Brief. The hearings had no relevance to Plaintiffs’ claim that the sewer service charge fails to meet the substantive requirements of section 6, subdivision (b).

The District’s reliance on *San Diego County Water Auth. v. Metropolitan Water Dist. of Southern Cal.* (2017) 12 Cal.App.5th 1123, 1142 [220 Cal.Rptr.3d 346], to argue that notice of a proposed increase to a fee gives notice that the underlying methodology of a fee is subject to challenge misses the mark. That case involved application of the statute of limitations, and held that whenever fees and water rates are reenacted, the statute of limitations for challenging the underlying rate structure begins to accrue again. (*Id.* at 1142.) It did not address whether a purported administrative remedy for protesting

an increase to a property-related fee applies to a challenge to the methodology for calculating the fee, or the specific language and structure of section 6, which demonstrates that the procedures of subdivision (a) do not act as a jurisdictional prerequisite to a challenge under subdivision (b).

**B. The District’s Interpretation of Article XIII D, Section 6 Would Thwart the Voter Intent of Proposition 218**

The District’s interpretation of section 6 not only ignores its plain language; it would thwart the voter’s intent in passing Proposition 218. It would allow government agencies to control if, and when, a fee-payor could bring a substantive challenge to a fee under section 6, subdivision (b).

Proposition 218 does not require that an agency hold annual hearings. It mandates a noticed hearing and opportunity to protest only when an agency seeks to impose a new, or increase an existing, fee or charge. (Cal. Const. art. XIII D, § 6, subd. (a).) Agencies are not obligated to increase rates on an annual basis. In fact, Government Code section 53756 allows agencies like the District to adopt a five-year schedule of property-related fees with automatic adjustments to avoid seeking annual approval. The frequency of rate increases and resultant hearings under section 6, subdivision (a) is, as the District, acknowledges, a matter of “legislative line-drawing” and discretion for a government agency.

The net effect of this agency discretion is that an agency can control if and when its actions trigger a hearing under section 6, subdivision (a). Unless and until an agency

seeks to increase their fees or charges, there is no requirement to hold a hearing under subdivision (a).

The District's proposed rule, which prohibits any challenge to a fee under subdivision (b) unless a protest is lodged at a hearing under subdivision (a), creates a perverse incentive for agencies to game the timing of increases (or simply avoid them) to minimize liability for unlawful fees. The statute of limitations for a fee refund is one year, so an agency could let the clock run on refund claims by spacing out increases to fees. (Gov. Code § 911.2.) This puts the agency in the driver's seat, and subverts the intent of Proposition 218 to enhance *taxpayer* control over new and increased property-related fees.

Consider this hypothetical. A sewer district imposes a sewer service charge prior to Proposition 218 that is based on a percentage of a customer's net worth, rather than use of the sewer system. Under the District's interpretation, a fee-payor cannot challenge the substantive constitutionality of the existing fee under section 6, subdivision (b), until the sewer district seeks to increase the fee, because the notice and hearing requirements of section 6, subdivision (a) are not triggered until an increase is proposed. The fee-payor could wait years (or forever) for that to occur, and it may never happen given that the fee is based on a percentage of net worth, not a fixed sum. In the meantime, the one-year statute of limitations for a refund under Government Code section 911.2 runs against the fee-payor, who is prohibited from seeking a refund until he has appeared at a section 6, subdivision (a) hearing that may never happen.