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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

HOWARD JARVIS TAXPAYERS ASSOCIATION,

Plaintiff and Appellant,

v.

COACHELLA VALLEY WATER DISTRICT,

Defendant and Respondent.

E078411

(Super.Ct.No. PSC1904774)

OPINION

APPEAL from the Superior Court of Riverside County. Sunshine S. Sykes, Judge. Affirmed.

Costell & Adelson Law Corporation, Jeffrey Lee Costell, Joshua S. Stambaugh and Sara M. McDuffie for Plaintiff and Appellant.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, Pamela K. Graham and Liliane M. Wyckoff for Defendant and Respondent.

Howard Jarvis Taxpayers Association (association) appeals from a judgment entered in favor of Coachella Valley Water District (district) after a bench trial on its reverse validation action. (Code Civ. Proc., § 860 et seq.) The association's lawsuit challenged the district's decision to use undesignated reserves from one of its accounting funds to finance a capital improvement project designed to conserve groundwater.

Groundwater conservation is a major concern for water agencies in Southern California, and this is especially true for the district, whose service area lies in the Colorado Desert region of Riverside County. To reduce the use of groundwater for irrigation purposes, in 2009 the district completed the first phase of construction on its Mid-Valley Pipeline (pipeline), a system of conveyance and storage facilities designed to deliver nonpotable water to golf courses and other irrigators. Rather than issuing debt to finance the project, the district used available reserves from its domestic water fund, an accounting device for the revenues from the rates, charges, and property taxes domestic customers pay for drinking water. A decade later, the district approved an interfund loan to repay the domestic water fund from the reserves of a fund for revenues from groundwater replenishment charges in the region the pipeline services.

On appeal, the association argues the interfund loan is invalid for multiple reasons, including that it violates Propositions 26 and 218 by assigning to domestic customers the costs of a project that benefits golf courses and other irrigators.[1] We agree with the trial

[1] In fact, Randall Roberts, a domestic customer and ratepayer, initiated the lawsuit, and the association substituted as plaintiff while this appeal was pending. For simplicity's sake, we refer to the association as the plaintiff.

judge's conclusion that Propositions 26 and 218 don't apply in these circumstances because the loan did not result in the imposition or increase of any water rates or charges. California's voter initiatives limiting local governments' taxing authority apply to revenue raising activities, not spending or the budget process. (*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1 (*Redding*).) Because we also conclude the association's other grounds for invalidating the loan lack merit, we affirm.

I

FACTS

A. *Groundwater Management and Overdraft*

Operating under the County Water District Law (Wat. Code, § 30000 et seq.) and Coachella District Merger Law (Wat. Code, § 33100 et seq.), the district is the public agency responsible for supplying water to the Coachella Valley—a desert region in Riverside County that lies between the San Jacinto and San Bernardino Mountains and borders the Salton Sea. Home to over 290,000 people, the Coachella Valley contains nine cities, including Palm Springs, and over 120 golf courses.[2] (See Operating and Capital Improvement Budget for FY 2019-2020 [the district's service area contains nearly 14 percent of the state's golf courses].) On average, the region receives less than four inches of rainfall a year.

[2] The eight other cities are La Quinta, Palm Desert, Cathedral City, Rancho Mirage, Indian Wells, Desert Hot Springs, Coachella, and Indio. The Coachella Valley also contains several unincorporated areas, such as Mecca, Oasis, Salton City, Thermal, and Thousand Palms.

One of the district's duties is to provide potable water to over 100,000 domestic customers. (*Coachella Valley Water District v. Superior Court* (2021) 61 Cal.App.5th 755, 760 (*Coachella*).) The area's main source of potable water is the groundwater in the Coachella Valley aquifer. However, because the aquifer is a limited resource in a desert region, groundwater conservation is crucial. Before the district built the pipeline, Coachella Valley's groundwater levels had been steadily declining for 50 years and the aquifer was in "overdraft"—the state of a basin when pumping or extraction exceeds replenishment. (Wat. Code, § 10735, subd. (a); *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279.) In addition to obvious cost and supply ramifications, overdraft can affect water quality and cause the gradual collapse of the gravel and silt layers overlying the aquifer (subsidence), which can in turn permanently destroy an aquifer's capacity to store water. (*Santa Maria*, at p. 291.)

The district is responsible for managing the aquifer and seeking a supplemental water supply for the Coachella Valley. One way the district manages the aquifer and reduces subsidence is through "replenishment," the spreading or injecting water from other sources, like captured mountain runoff, into the aquifer. The district has three main replenishment facilities or subbasins—the West Whitewater River Subbasin, the Mission Creek Subbasin, and the East West Whitewater River Subbasin. Water Code section 31630 gives the district authority "to levy and collect water replenishment assessments . . . for the purpose of replenishing ground water supplies." The district does so through three different "replenishment assessment charges"—imposed on the customers in each

of the three areas benefited by the subbasins who pump more than 25 acre-feet of water from the aquifer in any year. The revenues from these charges cover a portion of the costs of obtaining water for replenishment, as well as the operation and maintenance of the subbasins.

Another way the district conserves groundwater is through "in lieu programs," which require or encourage customers to use alternative sources of water. The district has two alternative, or supplemental sources of water: recycled water (wastewater that has been treated and sanitized) and imported water purchased from third parties. This case concerns Colorado River water the district obtains from the Metropolitan Water District of Southern California (MWD).[3] (Wat. Code, §§ 31630.5, subd. (g), 31631.) Both recycled and Colorado River water are nonpotable. Colorado River water can be treated to become potable, but it requires more treatment than groundwater does. The district receives its Colorado River water either through the Coachella Canal, which it owns and operates, or through MWD's Colorado River Aqueduct.

In 2006, the Legislature enacted sections 32600 through 32603 of the Water Code to empower the district to conserve groundwater by requiring certain customers to convert to nonpotable water. The Legislature found it a "waste" to use potable domestic

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[3] Like many water agencies throughout the state, the district has a supply contract with the Department of Water Resources to obtain water via California's massive storage and conveyance system, the State Water Project. However, because that system cannot deliver water directly to the Coachella Valley but MWD's canals can, the district entered into a separate exchange agreement with MWD to exchange its entitlement to State Water Project water for Colorado River water. (*Coachella*, *supra*, 61 Cal.App.5th at p. 762.)

water "for nonpotable uses for cemeteries, parks, highway landscaped areas, . . . and golf course irrigation." (Wat. Code, § 32601, subd. (a).) To avoid such waste, Water Code section 32601 authorizes the district to order any customer to convert to nonpotable water when doing so is safe, feasible, and costs no more than what the customer would pay for groundwater. As a result, the district's charge for nonpotable water is 85 percent of the relevant replenishment assessment charge plus pumping costs.

B. *Budgeting for Capital Improvement Projects*

The district's revenues come from the rates and charges it imposes for water and water-related services, as well as from various tax assessments on property within its service area. (Wat. Code, §§ 31007, 31701, 31702; *Coachella*, *supra*, (2021) 61 Cal.App.5th at p. 760.) The district separately accounts for its revenues by allocating them to funds related to their purpose.[4] For example, the district's domestic water and canal water funds contain revenues from related property taxes and the rates and various charges associated with delivering drinking water and with delivering nonpotable water via the Coachella Canal, respectively. The revenues from the replenishment access charges associated with the district's three subbasins are allocated to three corresponding funds: the West Whitewater Replenishment Fund, the Mission Creek Replenishment Fund, and the East Whitewater Replenishment Fund.

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[4] "The District's financial reporting structure is fund-based. A fund is defined as a separate, self-balancing set of accounts, used to account for resources that are segregated for specific purposes in accordance with special regulations, restrictions, or limitations." (FY 2019-2020 Operating and Capital Improvement Budget, p. 12.)

Each year, the district's board approves a budget that identifies authorized capital improvement projects scheduled for the upcoming fiscal year and their funding sources.[5] Though there are several funding options, the district prefers to finance capital improvement projects with its own reserves when feasible, to avoid incurring the higher interest and other debt expenses associated with borrowing from a third party. For example, in 2016, the district approved an interfund loan requiring the East Whitewater Replenishment Fund to repay the domestic water fund the costs of constructing a groundwater replenishment facility at the East Whitewater River Subbasin.

C. *The Pipeline's Purpose*

The district conceived of the pipeline as a way to convert more customers to nonpotable water by supplying them with imported Colorado River water and recycled water. As noted, the district receives Colorado River water through two delivery systems, the Colorado River Aqueduct and the Coachella Canal. These systems are in different areas of the valley and are not connected. The Colorado River Aqueduct runs along the northern edge of the district's service area. It delivers water to a turnout at Whitewater River, which is then used to recharge groundwater for pumping in the western part of the valley. The Coachella Canal is a 123-mile-long branch of the All American Canal that runs south of the Colorado River Aqueduct. Before the district built the pipeline, the Coachella Canal delivered water to the southern and eastern parts of the valley, which

[5] The district defines a capital improvement project as a project that costs "at least $25,000, has a useful life of more than a year, and results in the creation or revitalization of a fixed asset."

included over 77,000 acres of farmland, but only a small percentage of the region's golf courses.

The district first proposed the pipeline in 2000, in a conjunctive use study, as a way of delivering Colorado River water to the mid-valley region that wasn't currently serviced by either conveyance system.[6] The study observed that the area, which includes Palm Desert, Indian Wells and Rancho Mirage, had "a large concentration of golf courses that currently obtain most of their water from groundwater" and that "there was a market for up to 35,900 acre-feet" of Colorado River water if 49 of those courses converted to nonpotable water. In 2002, the district included the pipeline project in its water management plan as a means of conserving approximately 37,000 acre-feet of groundwater per year.

In 2005, the district released a final concept report for the pipeline. It proposed to construct the distribution system in three phases, with each phase enabling the district to deliver nonpotable water—Colorado River water, recycled water, or a blend of the two—to more of the mid-valley region's golf courses. The first phase of the pipeline, the one this lawsuit is concerned with, connects the Coachella Canal with the district's largest wastewater reclamation plant in Palm Desert. The next two phases added additional connections to bring more customers on line. The report estimated that 11 golf courses

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[6] Conjunctive use refers to the coordinated use of surface water and groundwater to minimize the effects of climate and maximize reserves. In other words, using surface water in wet years or storing it in a groundwater basin for extraction in dry years.

could connect to the project in phase one, followed by 12 in phase two and 19 in phase three.

The report noted the project would likely not be welcomed by the golf courses because they preferred pumping groundwater for irrigation purposes. Switching to nonpotable water would require them to comply with additional regulations, incur storage costs not associated with groundwater pumping, and upgrade their irrigation systems to handle the higher concentrations of salts and dissolved solids in recycled and Colorado River water.

D. *Construction of the Pipeline*

Following the 2005 final concept report, the district budgeted the pipeline project in its 2007 Capital Improvement Budget. It estimated the first phase would cost $70 million and identified revenues from replenishment assessment charges as a potential funding source. In January 2007, the district's board adopted two resolutions related to the pipeline's financing. The first resolution preserved the board's authority to use future bond proceeds to pay for the project. The second identified approximately $145 million in unrestricted reserves available for internal borrowing.

In March 2007, the board voted to begin construction on phase one and to fund the project with the undesignated reserves identified in the January 2007 resolution. In 2009, the district completed construction on phase one, a 54-inch pipeline that runs 6.7 miles and connects the Coachella Canal in Indio to a 65 acre-foot storage reservoir at the Palm

Desert reclamation plant and a 45 acre-foot reservoir for blending Colorado River water with recycled water. Within the first few years of its operation, the pipeline was delivering water to 16 golf courses in the mid-valley region, as well as homeowner's associations and a high school.

The district's audits and internal accounting documents reflect the project's costs totaled approximately $45.5 million and were paid with excess reserves from the domestic water fund. At the pipeline's outset, the district created the nonpotable water fund to account for the revenues and expenses associated with the pipeline.

E. *The Interfund Loan*

In May 2019, the district's board voted to designate its spending on phase one as an interfund loan for approximately $52 million from the domestic water fund to the West Whitewater Replenishment Fund. The loan has a 30-year term and covers construction costs, plus interest. Under the terms of the loan, annual payments are interest-only until the West Whitewater Replenishment Fund's reserves exceed their budgetary target, in which case the principal payment is the total amount of excess reserves in the fund. In 2020, the district merged the nonpotable water fund into the West Whitewater Replenishment Fund because that fund accounts for revenues derived from the geographic area the pipeline services.

F. *The Lawsuit*

In July 2019, the association filed a reverse validation action against the district challenging the interfund loan under various theories.[7] In June 2021, after a bench trial, Riverside County Superior Court Judge Sunshine Sykes issued a written ruling rejecting the association's arguments and denying its request to invalidate the interfund loan.

II

ANALYSIS

On appeal, the association asserts three grounds for invalidating the interfund loan. We conclude each argument lacks merit.[8]

We review questions of fact for substantial evidence and independently review questions of law. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712 ["The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo"].)

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[7] The validation statutes (Code Civ. Proc., § 860 et seq.) provide "a set of accelerated in rem procedures for determining the validity of certain bonds, assessments and other agreements entered into by public agencies." (*Planning & Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264, 266.) Not all agency actions are subject to validation. When it comes to local water agencies like the district, the validation statutes apply only to their assessments, the "warrants, contracts, [or] obligations" they enter, and the debt they issue. (Wat. Code, § 30066.) Though we're skeptical they apply to an internal account decision like the district's interfund loan, the parties didn't raise this issue on appeal, and in any event, the only practical difference between a validation action and the writ of mandate the association certainly could have filed instead (Code Civ. Proc., § 1085) appears to be the former's expedited, 60-day statute of limitations. (Code Civ. Proc., §§ 860, 863.)

[8] The association raised additional grounds for invalidating the loan at trial but abandoned them on appeal.

First, the association argues the interfund loan violates Propositions 26 and 218 because it requires domestic ratepayers to shoulder a disproportionate burden of the cost to construct a project designed to benefit golf courses and other irrigators. The trial judge rejected this argument on the ground there was no evidence the interfund loan imposed any new or increased rate or charge on any of the district's customers, let alone its domestic ratepayers. She found the lawsuit premature and based on speculation, noting, "[i]t may be that because the [West Whitewater replenishment] fund now has to repay this loan, the district will need to increase fees to further supply the fund so it can actually pay down the loan. But then [plaintiff] would need to specifically challenge the rate increase." The judge is correct.

A claim must involve a dispute that is "ripe" for judicial review. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169.) A dispute is ripe when it is "sufficiently concrete so that declaratory relief is appropriate" and the parties "will suffer hardship if judicial consideration is withheld." (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 64.)

Passed by voters in 1996 and 2010, respectively, Propositions 26 and 218 are part of a series of initiatives "designed to limit the authority of state and local governments to impose taxes without voter approval." (*Redding*, *supra*, 6 Cal.5th 1, 10.) Proposition 218 added articles XIII C and XIII D to the Constitution. (*Id.* at p. 10.) It limits local governments' authority "to assess taxes and other charges on real property" and restricts

the methods by which "local governments can *exact revenue* using fees and taxes not based on real property value or ownership." (*Ibid.*, italics added.)

The voters passed Proposition 26 over a decade later to curb what had become a common practice among local governments, that of exacting new property taxes by disguising them as "fees." (*Redding*, *supra*, 6 Cal.5th at p. 11.) The initiative amended article XIII C of the Constitution to broadly defining the term "tax" to include "any levy, charge, or exaction of any kind imposed by a local government" on its taxpayers. (Cal. Const., art. XIII C, § 1, subd. (e); see also *Redding*, at p. 11.) Another initiative, Proposition 13, excepted from the definition of a "tax" any "charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product." (Cal. Const., art. XIII C, § 1, subd. (e)(2).)

As the language of the propositions makes clear, a taxpayer's claim is not ripe until the agency actually *imposes* a tax, fee, charge, or exaction that is disproportionate to the cost of service provided. (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 368; *Webb v. City of Riverside* (2018) 23 Cal.App.5th 244, 258-261.) And here, no new charge or charge increase has been imposed upon the district's domestic customers. This is because the action the association seeks to invalidate—the district's approval of the interfund loan—is essentially a repayment plan between two of its accounting funds. In other words, the loan constitutes a revenue spending activity, not a revenue raising

activity. The association argues the loan has an indirect effect on rates, however, because the West Whitewater Replenishment Fund will never be solvent enough to pay off the $52 million debt, and as a result, the district will need to raise domestic rates to repay the domestic water fund. In this way, the association claims, domestic customers will end up being forced to pay for the costs of a service they don't receive or benefit from, in violation of Propositions 26 and 218.

The problem with this argument from a ripeness standpoint is that it's speculative. It is based on a claim the district will—in the immediate or near future—raise domestic rates. But, as our Supreme Court has explained, a "budgetary transfer" is not a tax unless it actually results in an increase in the amount a taxpayer is asked to pay. (*Redding*, *supra*, 6 Cal.5th at pp. 14, 19.) A claim the interfund transfer might someday directly result in a rate increase isn't sufficient. The increase has to have occurred, or the claim is not ripe.

Webb, *supra*, 23 Cal.App.5th 244 is illustrative. In that case, a ratepayer argued the City of Riverside violated Propositions 26 and 218 when it began transferring additional revenue from its electric utility reserve fund into its general fund without voter approval. (*Webb*, at p. 248.) The appellate court concluded the constitutional provisions did not apply to the challenged interfund transfers because the transfers didn't "increase the amount levied on Riverside ratepayers." (*Webb*, at p. 260.) The court explained the relevant inquiry was not whether the *transfers* had increased in amount but "whether the amount *charged to ratepayers* had increased." (*Id.* at p. 259; accord, *Humphreville v. City*

of Los Angeles (2020) 58 Cal.App.5th 115, 127 [faced with a challenge to an agency's "behind-the-scenes transfers of funds," the "effect on *the ratepayer* is what matters"].)

The same distinction is at play in our case. The district's decisions about how to spend its reserves do not implicate Propositions 26 and 218 unless those decisions result in an increase to its rates or charges. And here, as the trial judge correctly found, that has not happened yet.

Acknowledging the loan has not resulted in a tax, rate, fee, or charge as those terms are used in Proposition 26, the association argues the loan does, however, constitute an "exaction" within the meaning of the provision because the loan results in a taking (or exaction) of $52 million from the domestic fund. (Cal. Const., art. XIII C, § 1, subd. (e).) We are not persuaded. The constitutional provisions at issue do not apply to any transaction that can be described as a taking or exaction. Rather, the term "exaction," like the other terms listed before it, refers to amounts that local governments "impose[]" *on their taxpayers*. (*Ibid.*) As *Reid* explained, "'[i]mposed' in this context means *enacted*." (*Reid v. City of San Diego*, *supra*, 24 Cal.App.5th at p. 368, italics added.) Agencies do not enact interfund transfers, they enact rates and other types of charges. The voters enacted Propositions 26 and 218 to "curtail local agency discretion in *raising* funds," not spending them. (*Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1513 (*Capistrano*), italics added ["Proposition 218 was passed by the voters in order to *curtail* discretionary models of local agency *fee determination*"], second italics added.) Thus, because there is no evidence the district's

spending on the pipeline has directly impacted ratepayers (i.e., by causing them to pay higher rates), the association's claim the district assigned the costs of the pipeline to domestic customers without voter approval is not ripe.[9] (See, e.g., *Gonzalez v. City of Norwalk* (2017) 17 Cal.App.5th 1295, 1312-1314 [residents' Proposition 218 challenge to a city ordinance failed because the ordinance did not impose, extend, or increase a tax].)

Though the association's challenge is not justiciable, as a factual matter, we note it has mischaracterized the pipeline's purpose and beneficiaries. The association claims the district built the pipeline for the benefit of golf courses and other irrigators, to ensure those customers have a reliable water delivery system. But as we've seen, the pipeline's actual purpose is to conserve groundwater by converting more users to nonpotable water, which is generally lower quality and less desirable than groundwater. Domestic customers directly benefit from projects that displace demand for potable water, as the pipeline clearly does. (*Capistrano*, *supra*, 235 Cal.App.4th at p. 1503.)

Next, the association argues the interfund loan constitutes an ex post facto law because it retroactively imposes a $52 million liability on the West Whitewater Replenishment Fund. This argument fails for the obvious reason that the interfund loan is not legislation. The longstanding constitutional principle "that the legal effect of conduct

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[9] We deny the association's request to take judicial notice of a budget and cost of service study it claims support its argument the West Whitewater Replenishment Fund will never make more than interest payments on the loan. The documents were not before the judge because they postdate the trial, and in any event, they have no bearing on our conclusion the association's challenge isn't ripe.

should ordinarily be assessed under the law that existed when the conduct took place" applies to statutes. (*Landgraf v. USI Film Products* (1994) 511 U.S. 244, 265.) It has no application to a public agency's budget process.

Finally, the association argues the interfund loan constitutes an arbitrary and capricious agency action because it is a "sham loan" that will never be repaid. Putting aside how speculative this argument is (it's impossible to know what the status of the West Whitewater Replenishment Fund's reserves will be over the next 30 years), the association lacks standing to make it. Only an "interested person" may bring a reverse validation action. (Code Civ. Proc., § 863.) For purposes of this requirement, an "interested person" is one with "a direct, and not a merely consequential, interest in the litigation." (*Associated Boat Industries v. Marshall* (1951) 104 Cal.App.2d 21, 22 [interpreting the term in Code Civ. Proc., § 863's predecessor statute].)

"'The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. . . . [I]t is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available." (*Scott v. Common Council* (1996) 44 Cal.App.4th 684, 692, quoting *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699.) For these reasons, and with exceptions not applicable here, "a court is generally without power to interfere in the budgetary process." (*County of Butte v. Superior Court*, at p. 698.)

When a ratepayer challenges an agency's budgetary decisions, "[t]he question is not whether each cost in the . . . budget is reasonable. Instead, the question is whether the charge imposed *on ratepayers* exceeds the reasonable costs of providing the relevant service." (*Redding*, *supra*, 6 Cal.5th at p. 17.) Without a showing the interfund loan harms ratepayers, the association lacks the requisite direct interest to challenge it.

We conclude the association hasn't identified any basis for invalidating the interfund loan. The fundamental problem with this lawsuit is it's presently unclear whether the pipeline's financing will have an impact on the district's rates or charges. As long as that remains the case, the challenge is premature.

III

DISPOSITION

We affirm the judgment. Respondents shall recover costs on appeal.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.