

[Superior court finds Long Beach transfer of water and sewer funds unconstitutional, violates Prop 218](#)

Sebastian Echeverry, Managing Editor | Signal Tribune January 7, 2020



Photo by Luis Quintero from Pexels

The City of Long Beach will seek to appeal the court's ruling, sources say.

The Los Angeles Superior Court tentatively ruled in favor of local residents Diana Lejins' and Angela Kimball's petition on Thursday, Jan. 2, which argued that the transfer of Long Beach water and sewer funds carried out through Measure M— a voter approved transfer of surplus water department funds to the General Fund— was unconstitutional because it violated Proposition 218.

[COURT DOCUMENT FOR DIANA LEJINS, ET AL. V. CITY OF LONG BEACH, ET AL.](#)

[Click here to view the 22-page tentative court ruling on the water and sewer transfer litigation.](#)

The court ruled that the City of Long Beach must stop the transfer of water and sewer funds to its General Fund and return all Measure M transfers from its General Fund to the Long Beach Water Department's Water and Sewer Revenue Funds.

"This city's mayor and council are constantly asking for more money; and their spending is often very frivolous and self serving," Lejins told the Signal Tribune Monday, Jan. 6. "The time has come for this runaway city government to be reined in."

In a statement Monday, the City said that the ongoing litigation does not repeal Measure M, and that it only questions the voter-approved water- and sewer-revenue transfer.

"The gas-revenue transfer, which is approximately half of the revenue transfer authorized by Measure M, is not in question and will continue," the City's statement read.

[STATEMENT FROM THE CITY OF LONG BEACH CONCERNING THE MEASURE M LAWSUIT.](#)

[Click here to read the City's official statement in response to the court's ruling in favor of the petitioners.](#)

In a 22-page document, the court concluded that "the general tax fails as a violation of Prop 218. The City has not met its burden to prove that its general tax— which is blended in utility charges and is not a commodity charge based on actual usage— is not imposed upon ratepayers as an incident of property ownership."

In 1978, Proposition 13 changed how taxes were collected in California. Since its passing, Prop 13 limited how city governments could increase property taxes based on property value.

According to [California Tax Data's website](#), cities began looking for ways around Prop 13 by introducing special taxes and user fees, which increased property tax bills— the reason Prop 13 was passed in the first place.

In 1996, California introduced Proposition 218, which states that taxpayers may vote on all local taxes, and that property-related assessments and fees require taxpayer approval.

The City argued that the Measure M tax was voter approved in June 2018 to fund public-safety services, which authorized the City to transfer up to 12% of the annual-gross revenues of the waterworks and sewer system to the General Fund.

Court documents showed that in 2019 the LBWD budgeted Measure M transfers for the Water and Sewer Revenue Funds. The water fund included a \$9,318,000 Measure M transfer, and the sewer fund reported a \$2,094,000 Measure M transfer.

By mid-year, the City increased the total Measure M transfer to \$14.4 million, the court document reported.

The court stated that voter consent cannot convert what is considered “unconstitutional.” The ruling cited Article XIII D Sections 3 and 6 of Prop 218, which prohibit the increase of general taxes as fees “upon persons as an incident of property ownership.”

The court also ruled that the City could not tax consumers outside its jurisdiction. The City argued that it provides water and sewer services outside its borders, and that calling it unlawful to tax users both inside and out of its borders blurs the line of extraterritoriality— exemption from law.

The judge ruled that the transfer of water and sewer funds carried out through Measure M is unconstitutional, and therefore cannot be taxed to people outside city borders if it is considered unlawful to people within the city.

The City will seek to appeal the court’s ruling, as the city council voted in September 2019 to “appeal any potential adverse ruling.” The statement also cited a similar case concerning the City of Sacramento, which was able to advance its case by appealing.

This is not the first time the City has been challenged over its transfer of water and sewer funds.

[As previously reported in the *Signal Tribune*](#), Lejins sued the City in 2016 alleging that the money transferred as fees from the water department were intended for water and sewer services, and therefore should not be used for general governmental purposes.

In that ruling, the City settled, and agreed to repay the Water and Sewer Funds an aggregate amount of \$12 million over the course of four years.