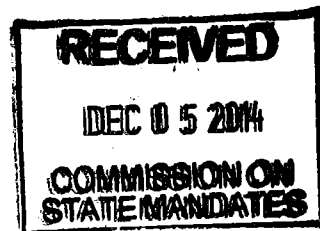
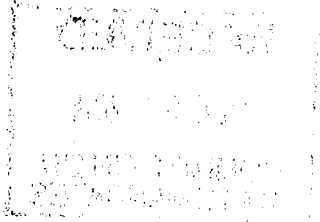


*Water Conservation*  
10-TC-12 and 12-TC-01





## Urban Retail Water Suppliers:

- Achieve 10% per capita reduction in water use by December 31, 2015;
- Achieve 20% per capita reduction in water use by December 31, 2020; and
- New and expanded reporting and adoption requirements for Urban Water Management Plans.

## Agricultural Water Suppliers:

- Measure the volume of water to each farm-gate turnout;
- Adopt a pricing structure for water customers based, at least in part, on the quantity of water delivered; and
- Prepare and adopt Agricultural Water Management Plans by December 31, 2012, and on or before December 31 in all future years ending in 5 or 0.

Proposed Decision generally finds foregoing requirements to be “new”, but denies reimbursement for two flawed reasons:

1. Notwithstanding Proposition 218, “all affected entities have fee authority, sufficient as a matter of law to cover the costs of any mandated activities.” (Proposed Decision, p. 84)
2. “Richvale Irrigation District and Biggs-West Gridley Water District are not subject to the taxing and spending limitations of articles XIII A and XIII B, and are therefore not eligible to claim reimbursement under article XIII B, section 6.” (Proposed Decision, p. 49)

- Reimbursement denied when “The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” (Government Code § 17556(d))
- “[T]he plain language of [§ 17556(d)] precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.” (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401)
- Key issue is whether public agency may unilaterally impose fee or assessment without legal impediment

# Understanding Articles XIII A through XIII D:

- Establishing or Increasing Taxes:
  - 2/3 vote of the electorate within the district's boundaries (XIII A, § 4)
  - Special districts, including school districts, have no power to levy general taxes (XIII A, § 2(a))
- Establishing or Increasing Assessments (XIII D, § 4):
  - Prepare Engineer's report identifying parcels and quantifying proportionate special benefits
  - Notice to landowners with ballots
  - Not less than 45 days later, conduct public hearing
  - Need majority vote of the specially benefitted properties

# Understanding Articles XIII A through XIII D (Continued):

- **Establishing or Increasing Property Related Fees or Charges (XIII D, §6):**
  - Identify parcels and notify landowners subject to proposed new or increased fee or charge
  - Not less than 45 days later, conduct public hearing to tabulate if majority protest exists
  - If no majority protest exists, conduct vote and approval of majority of property owners
- **Establishing or Increasing Fees or Charges for Water, Sewer, or Refuse Collection Services (XIII D, §6):**
  - Identify parcels and notify landowners subject to new or increased fee or charge
  - Not less than 45 days later, conduct public hearing to tabulate if majority protest exists
  - If no majority protest exists, XIII D, §6(c) allows for district to implement imposition without added step of obtaining seeking majority vote.

# Summary of Articles XIII A through XIII D after Proposition 218:

- Public agencies, including Claimants, can no longer unilaterally impose new or increased taxes, assessments, or property related fees or charges.
- Public agencies, including Claimants, may only propose a new or increased imposition
  - Tax = 2/3 Vote
  - Assessment = Majority Vote
  - Property related fees and charges = No Majority Protest + Majority Vote
  - Water, Sewer, Refuse Collection Services = No Majority Protest
- Importantly, customers/voters may reject the new imposition either at the time of the proposed imposition or later through the initiative power (XIII B, §3).



***Discharge of Stormwater Runoff,***

**07-TC-09**

- § 17556(d) “does not apply to street sweeping because the fee is contingent on the outcome of a written protest by a majority of the parcel owners.” (Statement of Decision, p. 115)

***Water Conservation,***

**10-TC-12 and 12-TC-01**

- “[T]he Commission finds that the claimants have statutory authority to establish and increase fees or assessments for the provision of water services.” (Proposed Decision, p. 85)

**Discharge of Stormwater Runoff,**

**07-TC-09**

- “Under Proposition 218, the local agency has no authority to impose the fee if it is protested by a majority of parcel owners.” (Statement of Decision, p. 115)

- “Additionally, it is possible that a majority of land owners in the local agency may never allow the proposed fee, but the local agency would still be required to comply with the state mandate.” (*Ibid.*)

**Water Conservation,**

**10-TC-12 and 12-TC-01**

- “Nothing in Proposition 218, case law, or any prior Commission decision, alters the analysis of the claimants’ statutory fee authority.” (Proposed Decision p. 86)

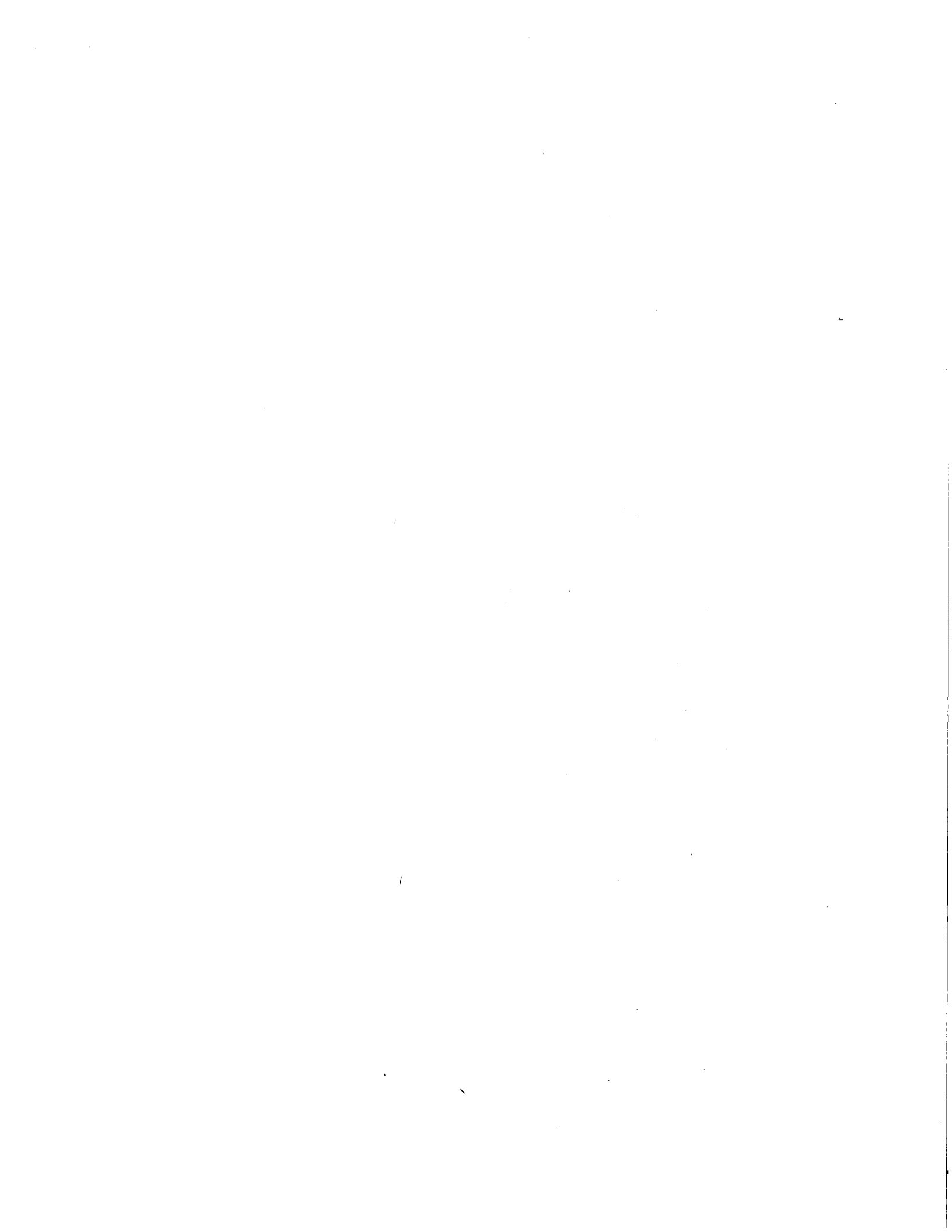
- “The Commission cannot now say, as a matter of law, that the claimants’ fee authority is insufficient based on the speculative and uncertain threat of a ‘written protest against the proposed fee or charge [being] presented by a majority of owners of the identified parcels....” (Proposed Decision, p. 90)

“In order for the Commission to make findings that the claimants’ fee authority has been diminished or negated pursuant to article XIII D, section 6(a), the claimants would have to provide evidence that they tried and failed to impose or increase the necessary fees....” (Proposed Decision, p. 89)

- **“Try and Fail” not required as a prerequisite to subvention for tax-funded agencies or assessment-funded agencies.**
  - **“Try and Fail” should not be required of entities subject to the majority protest provision of Proposition 218**
- **Proper approach is to deal with issue in the parameters and guidelines**
  - **Any proposed fees not blocked by majority protest identified as offsetting revenue**

## Summary:

- Majority of test claim is deemed “new requirements” that would be reimbursable except for a misunderstanding of the nature and effect of Proposition 218
- The Commission has already decided this exact issue
  - Local agencies no longer have the authority to establish or increase assessments and property related fees in light of Proposition 218
  - Local agencies may no longer unilaterally increase revenue; may only propose a new or increased tax/assessment/fee or charge and the outcome is determined by voters/customers
- Commission should adopt its prior reasoning and find that the identified state mandates are reimbursable; Parameters and Guidelines should identify new fees/charges or assessments to implement the mandates as offsetting revenue.



**The subvention provision “was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task.”**

*County of Fresno, 53 Cal.3d at 487.*

The subvention provision “was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task.”

*County of Fresno v. California*, 53 Cal.3d at 487.

The subvention provision was intended “**to provide local agencies with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.**”

*Lucia Mar Unified School District v. Honig*, 44 Cal.3d at 836 n.6.

“Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. [] **The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task.** [] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the ‘state shall provide a subvention of funds to reimburse . . . Local governments for the costs [or a state-mandated new] program or higher level of service,’ read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*”

*County of Fresno, 53 Cal.3d at 487.*



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*County of Fresno, 53 Cal.3d at 487.*

**1978 Article XIII A (Prop. 13)**

**1979 Article XIII B (Prop. 4)**

**1991 *County of Fresno v. State of California***

**1996 Article XIII C (Prop. 218)**

**Article XIII D (Prop. 218)**

which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semisolid wastes.<sup>240</sup>

“Solid waste handling” is defined in Public Resources Code section 40195 as “the collection, transportation, storage, transfer, or processing of solid wastes.” Given the nature of material swept from city streets, street sweeping falls under the rubric of ‘solid waste handling.’

Under Proposition 218, “refuse collection” is expressly exempted from the voter-approval requirement (article XIII D, § 6, subd. (c)). Although “refuse collection” has no definition in article XIII D, the plain meaning of refuse<sup>241</sup> collection is the same as solid waste handling, as the dictionary definition of “refuse” and the statutory definition of “solid waste” both refer to rubbish and trash as synonyms. Refuse is collected via solid waste handling.

To impose or increase refuse collection fees, the local agency must provide mailed written notice to each parcel owner on which the fee will be imposed, and conduct a public hearing not less than 45 days after mailing the notice. If written protests against the proposed fee are presented by a majority of the parcel owners, the local agency may not impose or increase the fee (article XIII D, § 6, subd. (a)(2)). In addition, revenues are: (1) not to exceed the funds required to provide the service, (2) shall not be used for any other purpose than to provide the property-related service, and the amount of the fee on a parcel shall not exceed the proportional cost of the service attributable to the parcel. And the service must be actually used by or immediately available to the property owner (article XIII D, § 6, subd. (b)).

Government Code, section 17556, subdivision (d), does not apply to street sweeping because the fee is contingent on the outcome of a written protest by a majority of the parcel owners. The plain language of subdivision (d) of this section prohibits the Commission from finding that the permit imposes “costs mandated by the state” if “The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” [Emphasis added.] Under Proposition 218, the local agency has no authority to impose the fee if it is protested by a majority of parcel owners.

Additionally, it is possible that a majority of land owners in the local agency may never allow the proposed fee, but the local agency would still be required to comply with the state mandate. This would violate the purpose of article XIII B, section 6, which is to “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>242</sup>

Thus, the Commission finds that fee authority under Public Resources Code section 40059 is not sufficient to pay for the mandated program or increased level of service in permit parts D.3.a.5 (street sweeping). Therefore, the Commission finds that street sweeping imposes costs mandated by the state and is reimbursable.

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<sup>240</sup> This definition also excludes hazardous waste, radioactive waste and medical waste, as defined.

<sup>241</sup> “Refuse” is defined as “ Items or material discarded or rejected as useless or worthless; trash or rubbish.” <<http://dictionary.reference.com/browse/refuse>> as of November 23, 2009.

<sup>242</sup> *County of San Diego, supra*, 15 Cal.4th 68, 81.

Any proposed fees that are not blocked by a majority of parcel owners for street sweeping must be identified as offsetting revenue in the parameters and guidelines.

Fees for street sweeping reports: Proposition 218 does not contain an express exemption on voter approval for reporting on street sweeping, only for “refuse collection.” Moreover, Proposition 218 (art. XIII D, § 6, subd. (b)(4)) states: “No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.” The permit does not require the street sweeping reports be available to property owners, only that the reports be submitted to the Regional Board. For these reasons, the Commission finds that Government Code section 17556, subdivision (d), does not apply to reporting on street sweeping, so that part J.3.a.(3)(c)x-xv of the permit imposes costs mandated by the state and is reimbursable.

Assessments for street operation and maintenance: As mentioned above, some local agencies collect an assessment for street sweeping, e.g., the County of Fresno<sup>243</sup> and the City of La Quinta.<sup>244</sup> Assessments are defined as “any levy or charge upon real property by an agency for a special benefit conferred upon the real property. ‘Assessment’ includes, but is not limited to, ‘special assessment,’ ‘benefit assessment,’ ‘maintenance assessment’ and ‘special assessment tax.’” (article XIII D, § 2, subd. (b).) The terms “maintenance and operation” of “streets” and “drainage systems,” although used in article XIII D, are not defined in it. The plain meaning of maintenance of streets and drainage systems, however, would include street sweeping because “maintenance” means “the work of keeping something in proper condition; upkeep.”<sup>245</sup> Clean streets are used not only for transportation, but for conveying storm water to storm drains.

The Supreme Court defined special assessments as follows:

A special assessment is a “compulsory charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein....” [Citation.] [Citation.] In this regard, a special assessment is ‘levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.’ [Citation.] ‘The rationale of special assessment[s] is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public.’<sup>246</sup>

The Supreme Court summarized the constitutional procedures for creating an assessment district.

Under Proposition 218's procedures, local agencies must give the record owners of all assessed parcels written notice of the proposed assessment, a voting ballot, and a statement disclosing that a majority protest will prevent the assessment's

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<sup>243</sup> County of Fresno, Resolution Nos. 8942 and 8943, adopted January 15, 2008.

<sup>244</sup> City of La Quinta, Resolution No. 2009-035, adopted May 5, 2009.

<sup>245</sup> <<http://dictionary.reference.com/browse/maintenance>> as of December 7, 2009.

<sup>246</sup> *Silicon Valley Taxpayers Ass'n. v. Santa Clara Open Space Authority* (2008) 44 Cal.4th 431, 442.