



Received
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Commission on
State Mandates

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Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Test Claim 10-TC-12 “Water Conservation Act of 2009” consolidated with 12-TC-01 “Agricultural Water Measurement.” Claimants: South Feather Water & Power Agency, Paradise Irrigation District, Richvale Irrigation District and Biggs-West Gridley Water District.

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim filed by the foregoing water agencies (Claimants) on the Water Conservation Act of 2009 (Act) and the Agricultural Water Measurement test claim on regulations promulgated by the Department of Water Resources (Regulations). The Claimants allege the Act and the implementing regulations promulgated by the Department of Water Resources are reimbursable mandates on urban retail water suppliers and agricultural water providers.

We conclude the Act and Regulations do not impose a reimbursable mandate on local agencies within the meaning of Article XIII B, section 6 of the California Constitution. All of the alleged reimbursable mandates are subject to the following Finance conclusions:

1. Each of the Claimants is a “special district” and is statutorily authorized to charge a fee for the delivery of water to the user. Each of these districts currently charges a fee to residential or agricultural users. Thus, each of these water agencies has the ability to cover any potential initial and ongoing costs related to the Act and Regulations with fee revenue. In *Connell v. Superior Court of Sacramento County* (1997) 59 Cal. App. 4th 382, 401-402, the court found, as a matter of law, that districts are precluded from reimbursement if a district has the authority to levy fees that are sufficient to cover the costs of the state-mandated program. Here, the Claimants have such fee authority under Water Code section 35470. Therefore, regardless of the Claimant’s established policies regarding their process to charge fees, the existence of fee authority sufficient to cover a mandated program’s costs, is the sole factor the Commission on State Mandates should consider. Government Code sections 17556, subdivision (d), 16270, and Water Code section 35470.

2. Each of the Claimants is statutorily authorized to sell water. Therefore, it is reasonable to assume that surplus water will accrue to each of these districts that result from the Act's and Regulations' conservation requirements. There is nothing in the Act or Regulations that impacts water rights or contractual water deliveries. Therefore, each district will likely have the opportunity to cover all or a portion of costs related to implementation of the Act or Regulations with revenue from surplus water sales. Water Code sections 475,480, and 35425, and Government Code section 17556, subdivision (e).

3. In *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987 and *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487, the courts held that special districts are only entitled to reimbursement if they are subject to the tax and spend limitations under articles XIII A and XIII B of the California Constitution, and only when the mandated costs in question can be recovered solely from the proceeds of taxes. Not all independent special districts are subject to article XIII A and article XIII B. Therefore, they are not impacted by the aforementioned tax and spend limitations. Each of the Claimants should be directed to provide information that will enable the Commission on State Mandates to determine if they are subject to tax and spending limitations.

Finance concludes the California Constitution, California statute, case law and previous decisions adopted by the Commission on State Mandates provide a substantial basis for determining the Claimants' request for reimbursement should be denied.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any question regarding this letter, please contact Randall Ward, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Tom Dyer
Assistant Program Budget Manager

Enclosure

Enclosure

DECLARATION OF RANDALL WARD
DEPARTMENT OF FINANCE
CLAIM NO. 10-TC-12 and 12-TC-01

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6/7/13

at Sacramento, CA



Randall Ward