

COMMISSION ON STATE MANDATES

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August 22, 2013

Dustin C. Cooper
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1681 Bird Street
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Re: Request for Additional Information Regarding Whether the Claimants are Eligible to Claim Reimbursement under Article XIII B, Section 6 and to Show Cause Why These Test Claims Should Not Be Dismissed

Water Conservation Act of 2009, 10-TC-12

Water Code Sections 10608 et seq.; 10800 et seq.;

Statutes 2009, 7th Extraordinary Session, Chapter 4;

South Feather Water and Power Agency, Paradise Irrigation District,

Richvale Irrigation District, and Biggs-West Gridley Water District, Claimants

Consolidated with:

Agricultural Water Measurement, 12-TC-01

California Code of Regulations, Title 23, Section 597 et seq.;

Register 2012, No. 28;

Richvale Irrigation District and Biggs-West Gridley Water District, Claimants

Dear Mr. Cooper:

Commission staff has begun to review these consolidated test claims, and, at this point, it is unclear whether the Commission has jurisdiction over these claims, because eligibility to claim reimbursement for state-mandated costs under article XIII B, section 6 of the California Constitution by these claimants has not been established. In order to be eligible to claim reimbursement for state mandated costs under the California Constitution, a claimant must be both: 1) a local agency; and 2) subject to the tax and spend limitations of articles XIII A and B of the California Constitution. Based on a review of the test claim filings and other public records, and as more fully described below, Richvale Irrigation District receives no revenue from taxes and is not subject to the appropriations limit of article XIII B, section 6. Therefore, Richvale Irrigation District is not eligible to claim reimbursement under the California Constitution and is not a proper party to any claim before the Commission.

Additional information is requested from the remaining districts, however, in order to determine if the Commission has jurisdiction over these test claims. Any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason may be dismissed by the Executive Director with a written notice stating the reason for dismissal.¹

¹ California Code of Regulations, title 2, section 1183(i).

A. Some special districts are not subject to the taxing and spending limitations, and therefore are not eligible claimants before the Commission.

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. “Costs mandated by the state” is defined to mean “any increased costs which a local agency or school district is required to incur...as a result of any statute...or any executive order implementing any statute...which mandates a new program or higher level of service of an existing program.”² “Local agency,” in turn, is defined to include “any city, county, special district, authority, or other political subdivision of the state.”³

However, not every “local agency,” as defined, is an eligible claimant before the Commission. In addition to an entity fitting the description above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. Section 6 was included in article XIII B in recognition that articles XIII A and XIII B of the Constitution severely restricted the taxing and spending powers of local governments.⁴ Article XIII B, section 6 provides in relevant part “[w]henever the Legislature ... mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service....” The Supreme Court recognized the purpose of article XIII B, section 6 was to protect local government from unfunded state mandates:

Specifically, [article XIII B, section 6] was designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ...local government for the costs of 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.*⁵

Thus, article XIII B, section 6 does not require reimbursement for expenses that are recoverable from sources other than tax revenue. Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,⁶ the Fourth District Court of Appeal concluded that redevelopment agencies were not eligible to claim reimbursement because their funding came primarily from tax increment financing, which the court determined, due to a valid statutory exemption, was not subject to the taxing and spending limitations of articles XIII A and XIII B:

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise,

² Government Code section 17514 (Stats. 1984, ch. 1459).

³ Government Code section 17518 (Stats. 1984, ch. 1459).

⁴ *County of Fresno, supra*, 53 Cal.3d at p. 487; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁵ *County of Fresno, supra*, 53 Cal.3d at p. 487; See also, *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280, and Government Code section 17556(d).

⁶ (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976.

through tax increment financing, “general revenues for the local entity.” The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner...⁷

Therefore, a local agency that does not collect and expend “proceeds of taxes” is generally not an eligible claimant before the Commission.⁸

Proceeds of taxes are subject to the spending limit and, in turn, are defined in article XIII B, section 8(c) to include *all tax revenues*; revenues from user charges and fees *to the extent that those proceeds exceed* the costs reasonably borne by that entity in providing the regulation, product, or service; proceeds from the investment of tax revenues; and subventions from the state, other than pursuant to article XIII B, section 6. The appropriations limit does not apply to an appropriation totally funded by “other than the proceeds of taxes.”⁹

Thus, article XIII B does not place spending limits on the expenditure of revenue from fees or assessments.¹⁰ “Proceeds of taxes” do not include “the proceeds from the sale of bonds, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.”¹¹

Thus, if a local agency is funded solely from service charges, fees, or assessments – revenues which are excluded from the taxing and spending limits – that agency is not subject to the revenue limits of article XIII B, and not entitled to reimbursement under article XIII B, section 6 and is thus not an eligible claimant for mandates purposes. A local agency cannot accept the benefits of an exemption from article XIII B’s spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.¹²

⁷ *Redevelopment Agency of San Marcos, supra*, 55 Cal.App.4th at p. 986 [internal citations omitted].

⁸ *Ibid.* See also, *County of Fresno, supra* (1991) 53 Cal.3d 482, at p. 487 [“[R]ead 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.”].

⁹ California Constitution, article XIII B, section 9(c), which states: “‘Appropriations subject to limitation’ for each entity of government do not include: (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.”

¹⁰ *Placer v. Corin, supra*, 113 Cal.App.3d 443, 450.

¹¹ *Id.* at p. 453, fn. 8, quoting Government Code section 53715, which implemented article XIII B; see also, *County of Fresno, supra*, 53 Cal.3d 482, 487.

¹² *Placer v. Corin, supra*, 113 Cal.App.3d at p. 453; *City of El Monte, supra*, 83 Cal.App.4th 266, 281-282.

B. The special districts at issue in these consolidated test claims may not be eligible for reimbursement.

The first of the two consolidated test claims was filed jointly by four special districts: South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, and Biggs-West Gridley Water District. Richvale Irrigation District and Biggs-West Gridley Water District were joint claimants on the second of the two consolidated claims. Based on information reported by the claimants to the State Controller's Office (SCO), there is substantial doubt as to whether any of the four districts are eligible claimants before the Commission.

The SCO compiles and issues an annual report on special districts that, among other purposes, identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463.¹³ The report is required to contain, among other things:

(a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.

(b) The aggregate amount of taxes levied and assessed against this property collected by or for the local agency during the fiscal year...

¶...¶

(e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property.¹⁴

If an officer of the district willfully and knowingly rendered a false report to the SCO, that officer would be guilty of a misdemeanor.¹⁵ The report submitted by the special districts contains the data upon which the SCO bases its Special Districts Annual Report.

In the State Controller's Special Districts Annual Report for 2010-2011 (the most recent report currently available), *none of the four districts* is listed in Table 1 as being subject to the appropriations limit.¹⁶

Richvale Irrigation District is not only indicated in Table 1 to carry no revenue subject to the appropriations limit, but also acknowledges in its declaration submitted in support of Test Claim 10-TC-12 that the District receives no property tax revenue.^{17, 18} Table 1 states total revenue in the amount of \$1,338,972. Table 8 indicates that the total revenue is comprised of \$1,318,562 in

¹³ Government Code section 12463.

¹⁴ Government Code section 53892.

¹⁵ Government Code section 53894.

¹⁶ See 2010-2011 Special Districts Annual Report, attached, at pp. 39; 191; 210; 233.

¹⁷ 2010-2011 Special Districts Annual Report, attached, at p. 210.

¹⁸ Test Claim 10-TC-12, at p. 22.

“Operating Revenues,” primarily from water sales; \$10,410 in “Interest Income;” and an additional \$10,000 in “Other Non-Operating Revenues,” for a total of \$1,338,972.¹⁹ Prior years reveal a similar constitution of the District’s revenue, with no income from taxes or other assessments, and no revenue subject to the appropriations limit.

Because Richvale Irrigation District receives no revenue from taxes, and is not subject to the appropriations limit of article XIII B, section 6, the District is not an eligible claimant before the Commission.

However, whether or not South Feather Water and Power Agency, Paradise Irrigation District, and Biggs-West Gridley Irrigation District are subject to the tax and spend limitations of article XIII of the California Constitution is less clear, and Commission staff seeks further briefing. As stated above, these three Districts are not indicated in Table 1 of the Special Districts Annual Report to be subject to the appropriations limit of article XIII B. However, Tables 8 and 17 of the report, and the declarations of the three districts included in the test claim filings indicate that these districts may receive “proceeds of taxes.” Since all proceeds of taxes are subject to the appropriations limit under the Constitution,²⁰ there appears to be an inconsistency in the public records that needs to be explained in order to determine if the Commission properly has jurisdiction over these test claims.

Paradise Irrigation District, in Table 8 of the 2010-2011 Special Districts Annual Report, is indicated to have received \$255,137 from “Taxes and Assessments: Current Secured and Unsecured (1%),” and \$176,279 from “Voter Approved Taxes.”²¹ It is unclear why, if these funds are in fact tax revenue, the District does not report being subject to the revenue limits. Paradise Irrigation District states that it receives a share of property tax revenue each year, which comports with the information in Table 8 of the Annual Report, but the declaration does not address the appropriations limit.²²

Similarly, South Feather Water and Power Agency is shown, in Table 8 of the 2010-2011 report, to have received \$506,256 from “Taxes and Assessments: Current Secured and Unsecured (1%).”²³ However, the exact source of that revenue is unknown. Table 8 of the Annual Report indicates that the funding is from “Taxes and Assessments,” but if those funds were attributed to taxes, the district should be subject to the appropriations limit in Table 1 to that extent. South Feather does state, in declarations filed along with the test claim, that the District “receives an annual share of property tax revenue...expected to be approximately \$500,000” for fiscal year 2011-2012.²⁴ That assertion comports with the information in Table 8 of the Special Districts

¹⁹ *Id.*, at p. 415.

²⁰ Article XIII B, section 8(b) [appropriations subject to limitation includes “any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6)”];

²¹ 2010-2011 Special Districts Annual Report, attached, at p. 410.

²² Test Claim 10-TC-12, at p. 26.

²³ *Id.*, at pp. 271; 424.

²⁴ Test Claim 10-TC-12, at p. 18.

Annual Report, but does not explain why the District would not be subject to the appropriations limit, as indicated in Table 1, to the extent of any funds attributed to tax revenue.²⁵

Biggs-West Gridley apparently failed to report for the 2010-2011 fiscal year,²⁶ but in prior years (2009-2010, and 2008-2009), Biggs-West Gridley is listed in Table 1, and indicated not to be subject to the appropriations limit for any portion of its revenues.²⁷ In addition, Biggs-West Gridley is shown in Table 8 to receive zero revenue from "Taxes and Assessments" for the 2009-2010 report.²⁸ Table 1 indicates revenue of \$837,752, and expenditures of \$935,970, for fiscal year 2009-2010.²⁹ Table 8 indicates "Total Operating Revenues" of \$828,733, and "Non-Operating Revenues" of \$9,019, attributed to "Interest Income."³⁰ The sum of those amounts constitutes the entirety of the \$837,752 in revenue shown in Table 1. Biggs-West Gridley states in a declaration filed in support of Test Claim 10-TC-12, that it receives a share of local property tax revenue, and that it expects to receive approximately \$64,000 for fiscal year 2011-2012, but the District does not explain the inconsistency between that assertion and the prior years' reporting to the Controller, nor the indication that the District is not subject to the appropriations limit.

None of the claimants' submissions sufficiently demonstrate the exact nature of the funding available to the Districts. Test claim 10-TC-12 refers to "their general purpose funds," without explaining the origin of those funds,³¹ and whether any of those funds could be characterized as "proceeds of taxes," as discussed above. And, the three districts state in declarations that they receive some amount of property tax revenue, but none explain why they would not be subject to the appropriations limit, as indicated in Table 1 of the Annual Report.

Therefore, Commission staff seeks further briefing with respect to Biggs-West Gridley Water District, Paradise Irrigation District, and South Feather Water and Power Agency, and from state agencies, on the following questions specifically:

1. *Does each of the remaining three Districts (Paradise, Richvale, and South Feather) receive proceeds of taxes, as defined in article XIII B, section 8?*
2. *Were the Districts' revenues accurately reported to the Controller in accordance with law, and if so, why are the revenues in question not subject to the appropriations limit, as indicated in Table 1 of the Annual Report?*

Based on the self-reported exemption from the appropriations limit over the last three years' Special Districts Annual Reports, unless the Districts can produce evidence that the revenues in question are in fact proceeds of taxes as defined in article XIII A, and subject to the appropriations limit of article XIII B to that extent, these test claims will be dismissed for lack of jurisdiction.

²⁵ See Special Districts Annual Report 2010-2011, attached, at pp. 233; 423.

²⁶ See 2010-2011 Special Districts Annual Report, attached, at p. 1077.

²⁷ See, e.g., 2009-2010 Special Districts Annual Report, attached, at p. 39.

²⁸ See 2009-2010 Special Districts Annual Report, attached at pp. 359.

²⁹ *Id.*, at p. 39.

³⁰ *Id.*, at p. 359.

³¹ Test Claim 10-TC-12, at p. 13.

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Request for State Agency Review of Test Claim and Comments from the Claimant and State Agencies on the Questions Posed Above

State agencies and the claimant are requested to file written comments on or before **September 23, 2013**, including responses to the questions posed above. Please provide citations to applicable statutory and case law to support your conclusions regarding the above questions. State agencies that choose not to respond to this request are asked to submit a written statement of non-response to the Commission. Requests for extensions of time may be filed in accordance with sections 1183.01(c) and 1181.1(h) of the Commission's regulations (Tit. 2 CCR,).

Rebuttal and Additional Briefing Requested

The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the Commission's regulations. State Agencies may also rebut any claimant comments submitted by **September 23, 2013** on the above questions. All rebuttal comments are due 30 days from the service date of written comments, but no later than **October 23, 2013**.

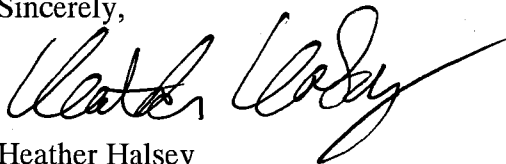
Process for Filing Comments

The Commission has promulgated a mailing list of parties, interested parties, and interested persons for this test claim and will provide the list to those included on the list, and to any person who requests a copy.

You are advised that comments filed by hard copy with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. For instructions on electronic filing, please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.shtml. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2.

Please call Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey
Executive Director