

COMMISSION ON STATE MANDATES

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April 24, 2007

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
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San Bernardino, CA 92415-0018

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Adopted Statement of Decision

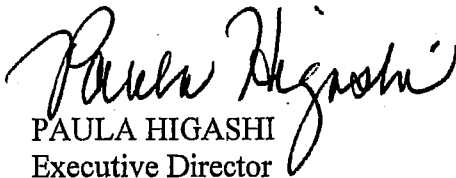
Deed of Trust Reconveyance and Mortgage Certificate, 02-TC-41
Civil Code Section 2941
Statutes 2000, Chapter 1013 (AB 996)
County of San Bernardino, Claimant

Dear Ms. Ter Keurst:

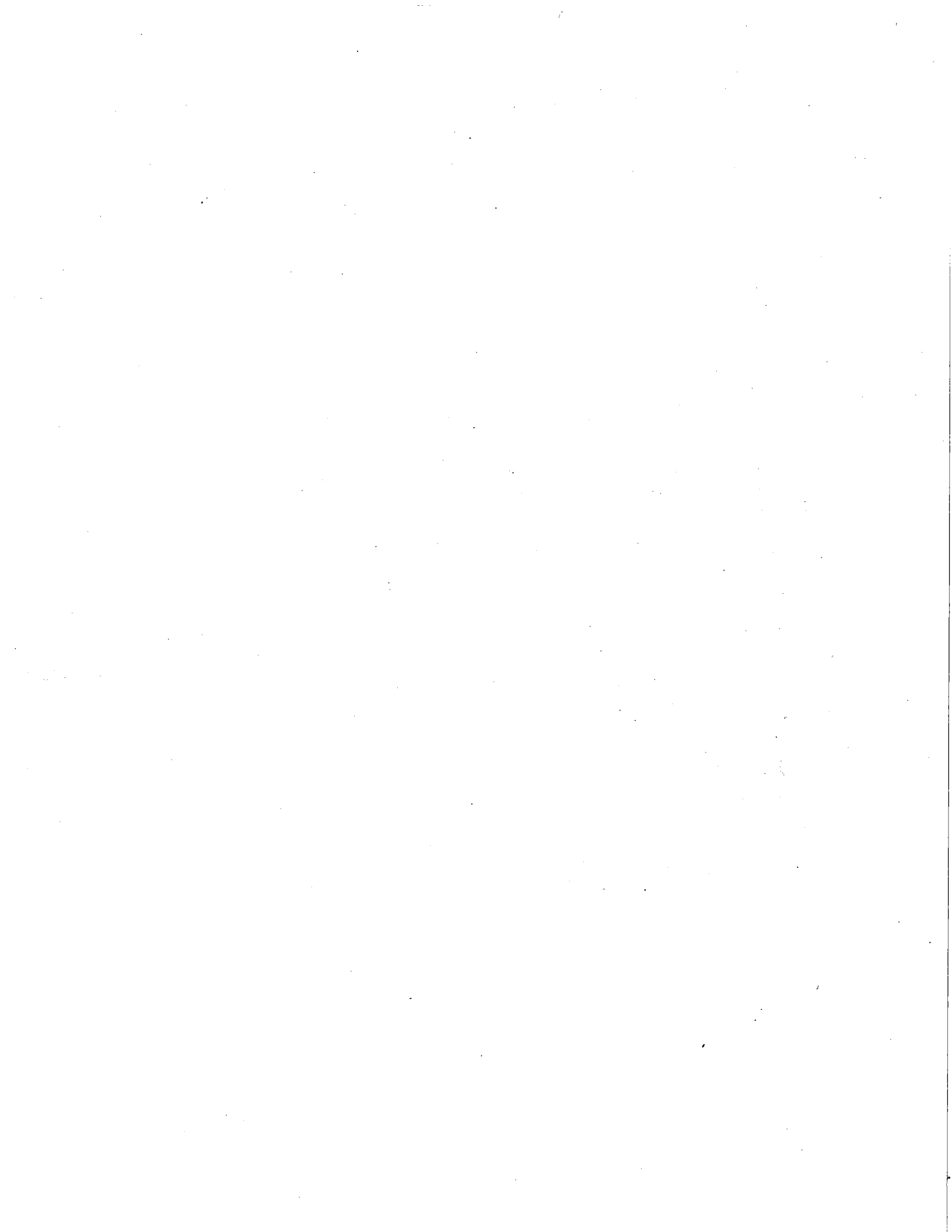
The Commission on State Mandates adopted the enclosed Statement of Decision to deny this test claim on April 16, 2007.

Please contact Kenny Louie at (916) 323-2611 if you have any questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision



BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Civil Code Section 2941

Statutes 2000, Chapter 1013 (AB 996)

Filed on June 27, 2003,
By County of San Bernardino, Claimant.

Case No.: 02-TC-41

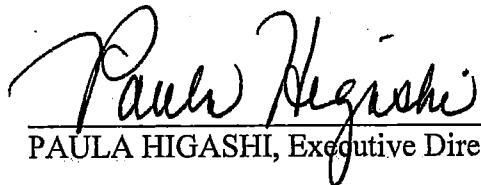
*Reconveyance of Deed of Trust and Mortgage
Discharge Certificate*

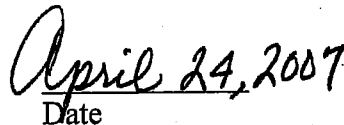
STATEMENT OF DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2, CHAPTER 2.5.
ARTICLE 7

(Adopted on April 16, 2007)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.


PAULA HIGASHI, Executive Director


Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Civil Code Section 2941

Statutes 2000, Chapter 1013 (AB 996)

Filed on June 27, 2003,
By County of San Bernardino, Claimant.

Case No.: 02-TC-41

*Reconveyance of Deed of Trust and Mortgage
Discharge Certificate*

STATEMENT OF DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2, CHAPTER 2.5.
ARTICLE 7

(Adopted on April 16, 2007)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during the hearing on April 16, 2007. Ms. Bonnie Ter Keurst represented and appeared for the claimant. Ms. Carla Castañeda and Ms. Susan Geanacou appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 5 to 2 to deny this test claim.

Summary of Findings

This test claim was filed on June 27, 2003, by the County of San Bernardino on a statute that establishes the deadline at which county recorders must process and record deed of trust reconveyances (reconveyances) and mortgage discharge certificates (discharge certificates). In 2000, the Legislature passed Assembly Bill 996, amending section 2941 of the Civil Code. The amendments to Civil Code section 2941 required county recorders to process and record deed of trust reconveyances and mortgage discharge certificates within two business days from the day of receipt. Prior law imposed no specific deadline for county recorders to process and record these documents.

The Commission finds that the test claim statute does not constitute a reimbursable state-mandated program, as it does not impose a new program or higher level of service on counties. Trust reconveyances and mortgage discharge certificates were required to be processed and recorded before the enactment of the test claim statute. Thus, the test claim statute merely imposes a deadline, and does not mandate any new activities or provide any tangible increase in the level of service to the public.

The Commission concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not impose a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

COMMISSION FINDINGS

Background

This test claim addresses the deadline at which county recorders must process and record deed of trust reconveyances (reconveyances) and mortgage discharge certificates (discharge certificates). Pursuant to Civil Code section 2941, a mortgagee (the lender) must execute a certificate of discharge and record it or cause it to be recorded in the office of the county recorder within 30 days after the mortgage has been satisfied. When a deed of trust has been satisfied the beneficiary of the trust (the lender) shall execute and deliver to the trustee the original note and any other documents necessary to reconvey the deed of trust. The trustee must then execute the full reconveyance and record or cause it to be recorded with the county recorder within 21 days of receipt of the original note, fees, and any other documents necessary for reconveyance.

Prior law required county recorders to process and record reconveyances and discharge certificates received from trustees and mortgagees, but did not impose a specific deadline to complete these tasks. Instead, Government Code section 27320 provides that “[t]he recorder shall record it without delay...”¹

The test claim legislation, Statutes 2000, chapter 1013 (AB 996), made various amendments to Civil Code section 2941 affecting mortgagees and deed of trust beneficiaries.² However, in regard to the claimant, the test claim statute requires county recorders to process and record reconveyances and discharge certificates within two business days from the day of receipt. Specifically, Civil Code section 2941, subdivision (c), (formerly codified in subdivision (d)) states in relevant part:

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

Claimant's Position

Claimant, County of San Bernardino, contends that the test claim statute constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant asserts the test claim statute mandates a new program or higher level of service, stating:

Prior to the enactment of the Chapter 1013, Statutes of 2000, the county recorder was not legally required to stamp and record the full reconveyance or certificate

¹ Prior to the enactment of the test claim statute the Civil Code did not address the specific duties of county recorders, instead the Civil Code referenced the Government Code.

² Civil Code section 2941, subdivision (d) as amended in Statutes 2000, chapter 1013 defined “cause to be recorded” and “cause it to be recorded” as pertaining to Civil Code section 2941 and provided trustees the benefit of specific evidentiary presumptions.

of discharge within 2 business days from the day of receipt. Enactment of this statute has increased the duties of the county recorder, and requires the county recorder to provide a higher level of service for an existing program.³

Additionally, claimant argues that the test claim statute “clearly meets both tests that the [California] Supreme Court created in the [*sic*] *County of Los Angeles v. State of California* (1987) for determining what constitutes a reimbursable state mandated local program.”⁴

The claimant further states that meeting the new requirement of Civil Code section 2941, as amended by the test claim statute, required increased costs associated with the following activities:

- receiving and processing incoming certified mail;
- document examination;
- outbound mail processing;
- policy and procedure development;
- training and monitoring.

On February 9, 2007, the Commission received claimant’s comments in rebuttal to the draft staff analysis. Claimant’s comments will be addressed, as appropriate in the analysis below.

Department of Finance’s Position

The Department of Finance filed comments, dated July 17, 2003, addressing claimant’s test claim allegations. The Department of Finance did not dispute claimant’s position, stating, “the statute may have resulted in a reimbursable State mandate.”

The Department of Finance submitted subsequent comments, dated January 22, 2007, agreeing with the conclusions in the draft staff analysis, stating:

Finance agrees with the Commission staff’s recommendation to deny the test claim. The test claim statute does not mandate a new program or higher level of service on county recorders within the meaning of Article XIII B, Section 6 of the California Constitution, as determined by the courts. Processing and recording trust reconveyances and mortgage discharge certificates were required activities

³ Test Claim, page 2.

⁴ Test Claim, page 5. It should be noted that the test as set forth in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, does *not* determine what constitutes a *reimbursable* state-mandated program. Rather, the test is used to determine whether test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution. To determine whether a “program” is a *reimbursable* program it is necessary to determine if the “program” is a new program or higher level of service mandated on counties and whether it imposes increased costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

pursuant to Government Code section 27320 prior to Chapter 1013, Statutes of 2000, which amended Civil Code section 2941.⁵

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁶ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁷ “Its purpose is 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.”⁸ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁹ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹⁰

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹¹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁵ Department of Finance comments on the draft staff analysis, dated January 22, 2007, p. 1.

⁶ Article XIII B, section 6 provides: “Whenever the Legislature or any state agency 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, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁷ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, reaffirming the test set out in *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

legislation.¹² A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹³

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁴

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶

Issue 1: Does the test claim statute mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

The courts have held that legislation mandates a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution when: (a) the requirements are new in comparison with the pre-existing scheme *and* the requirements were intended to provide an enhanced service to the public,¹⁷ or (b) the state has shifted fiscal responsibility for a program from the state to a local agency.¹⁸

The claimant disputes the above definition of a “new program or higher level of service,” and contends that “the required activity or task must be new, constituting a ‘new program,’ or it must create a ‘higher level of service’ over the previously required level of service.”¹⁹ Claimant further states that the test claim is being submitted based on the contention that the test claim statute is a “higher level of service” and concedes that the test claim statute does not constitute a “new program” or a shift in fiscal responsibility from the state to the county.

¹² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514. and 17556.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁶ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁸ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁹ Claimant response, dated February 9, 2007, p. 1, original italics.

In support of its contentions, claimant cites to staff's remarks regarding a "higher level of service" made during the October 4, 2006 Commission hearing of *Fifteen -Day Close of Voter Registration* (01-TC-15). Staff's remarks, however, do not support claimant's contentions.²⁰ Instead, staff states that a test claim statute can constitute a "higher level of service" only with a finding that the state is mandating new requirements on local agencies. As quoted by claimant, staff states:

There aren't too many higher-level-of-service cases that have been decided by the courts. One of them, though, is Long Beach Unified School District v. The State of California. And that case was a higher level of service regarding racial desegregation, where you had existing federal law, and the state came and required additional requirements imposed. And the court said that was a higher level of service. *In the process, to find a higher level of service is requiring a finding that the State is mandating new requirements on the local agencies and school districts.*²¹ (Italics added.)

The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."²² A statute or executive order mandates a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.²³

Thus, to determine whether a test claim statute constitutes a "new program or higher level of service" requires a finding that the requirements are new in comparison with the pre-existing scheme *and* the requirements were intended to provide an enhanced service to the public, or the state has shifted fiscal responsibility for a program from the state to local agencies.

²⁰ It should be noted that the Commission came to the same conclusion in *Fifteen - Day Close of Voter Registration* (01-TC-15) as the Commission does here for *Reconveyance of Deed of Trust and Mortgage Discharge Certificate* (02-TC-41).

²¹ Claimant response, dated February 9, 2007, p. 2. Citing Reporter's Transcript of Proceedings, for the October 4, 2006 Commission hearing regarding *Fifteen -Day Close of Voter Registration* (01-TC-15).

²² *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *San Diego Unified School District, supra*, 33 Cal.4th 859, 874.

²³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Are the Test Claim Requirements New in Comparison With the Pre-existing Scheme and Intended to Provide an Enhanced Service to the Public?

To make this determination, the test claim statute must initially be compared with the legal requirements in effect immediately prior to its enactment.²⁴

Prior to the enactment of the test claim statute, the Civil Code did not address the specific duties of county recorders. Rather, Civil Code section 1172 provides, "The duties of county recorders, in respect to recording instruments, are prescribed by the Government Code."

Government Code section 27320 (enacted in 1947), as pertaining to county recorders' duties regarding recording instruments such as reconveyances and discharge certificates, provides in relevant part:

When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay...²⁵

After the enactment of the test claim statute, Civil Code section 2941 provided in relevant part:

Within two business days from the day of receipt, if received in recordable form together with all required fees, the county recorder shall stamp and record the full reconveyance or certificate of discharge.

The only change the test claim statute made pertaining to the duties of county recorders is the imposition of a two business-day deadline to record reconveyances and discharge certificates. While the imposition of a deadline for county recorders is new to Civil Code section 2941, the activities of processing and recording trust reconveyances and mortgage discharge certificates are not new activities. As shown by the language of Government Code section 27320, county recorders' offices have been required to perform these activities prior to the passage and enactment of the test claim statute.

Claimant contends that the imposition of a compressed timeline has increased the costs and duties of the county recorder, and thus enhanced service to the public. However, the mere shortening of time in which county recorders must process and record trust reconveyances and mortgage discharge certificates does not change the level of service related to those activities. In discussing its decision in the 1987 *County of Los Angeles* case, the California Supreme Court stated, "[t]he law increased the cost of employing public servants, but it did not in any tangible manner increase the level of service provided by those employees to the public."²⁶ Similarly, imposing a deadline may have increased costs of recording certain documents as argued by claimant, but it has not provided any tangible increase in the level of service to the public, as the

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ Government Code section 27320 (added by Stats. 1947, ch. 424, § 1) as amended by Statutes 1982, chapter 843, section 5.

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 875.

documents would have been required to be processed and recorded with or without the test claim statute.

In claimant's response to the draft staff analysis, claimant relies upon *Long Beach Unified School Dist.*, which found state regulations requiring specific activities to alleviate the racial imbalance in schools to be a higher level of service.²⁷ In *Long Beach Unified School Dist.*, the regulations required specific activities not previously required under state law and beyond those required under the United States Constitution and relevant case law.²⁸ Unlike *Long Beach Unified School Dist.*, the test claim statute does not impose any new activity upon claimant. As stated above, prior to and after enactment of the test claim statute claimant was required to process and record reconveyances and discharge certificates. Thus, under *Long Beach Unified School Dist.*, the test claim statute does not constitute a higher level of service.

Claimant argues that the test claim statute's legislative history suggests an intent that the test claim statute would reduce litigation against mortgagees and trustees. As a result, claimant contends that the test claim provides a higher level of service to the public. However, as of this date, courts have found reimbursable mandates only in situations in which a new activity has been imposed or a shift in fiscal responsibility from the state to the local agency has been shown. Here, no new activity has been imposed on claimant, thus it must be determined if the state has shifted fiscal responsibility from the state to counties.

Has the State Shifted Fiscal Responsibility to a Local Agency?

A test claim statute can constitute a new program or higher level of service if the state has transferred from the state to counties complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility.²⁹

In this case, there has not been a shift in financial responsibility for a program from the state to the counties. The costs attributed to processing and recording trust reconveyances and mortgage discharge certificates have historically been borne by counties.³⁰ Here, the test claim statute merely sets a deadline for processing and recording these documents. Thus, the test claim statute has not shifted financial responsibility for a program from the state to the counties.

For the reasons stated above, the Commission finds that the test claim statute does not mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

²⁷ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155.

²⁸ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 173.

²⁹ California Constitution, article XIII B, section 6, subdivision (c). The court in *County of Los Angeles* further states, "an increase in costs does not result in a reimbursement requirement...[r]ather the state must be attempting to divest itself of its responsibility to provide fiscal support for a program..." *County of Los Angeles 2003*, *supra*, 110 Cal.App.4th 1176, 1194.

³⁰ Government Code section 27360 (added by Stats. 1947, ch. 424, § 1) provides "For services performed by him, the county recorder shall charge and collect the fees fixed in this article."

CONCLUSION

The Commission concludes that Civil Code section 2941, as amended by Statutes 2000, chapter 1013, does not mandate a new program or higher level of service on counties and, thus, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Commission on State Mandates

Original List Date: 7/7/2003 Mailing Information: Notice of adopted SOD
Last Updated: 7/19/2006
List Print Date: 04/16/2007 Mailing List
Claim Number: 02-TC-41
Issue: Deed of Trust Reconveyance and Mortgage Discharge Certificate

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

April 24, 2007, I served the:

Adopted Statement of Decision

Deed of Trust Reconveyance and Mortgage Certificate, 02-TC-41
Civil Code Section 2941
Statutes 2000, Chapter 1013 (AB996)
County of San Bernardino, Claimant


by placing a true copy thereof in an envelope addressed to:

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 27, 2005 at Sacramento, California.


Lorenzo Duran Jr.

