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December 12, 2014

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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision
Water Conservation, 10-TC-12 and 12-TC-01
Water Conservation Act of 2009 et al.
South Feather Water and Power Agency, Paradise Irrigation District,
Oakdale Irrigation District, and Glenn-Colusa Irrigation District, Claimants

Dear Mr. Cooper, Ms. Stevens, and Mr. Hitchings:

On December 5, 2014, the Commission on State Mandates adopted the decision to deny the test claim on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: 10-TC-12 Water Code Division 6, Part 2.55 [Sections 10608 through 10608.64] and Part 2.8 [Sections 10800 through 10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4; Filed on June 30, 2011; By, South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, Biggs-West Gridley Water District, Claimants; *Consolidated with* 12-TC-01 Filed on February 28, 2013; California Code of Regulations, title 23, sections 597, 597.1 597.2, 597.3, and 597.4, Register 2012, No. 28; By, Richvale Irrigation District, Biggs-West Gridley Water District, Oakdale Irrigation District, Glenn-Colusa Irrigation District, Claimants.	Case Nos.: 10-TC-12 and 12-TC-01 *Water Conservation* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 5, 2014*) (*Served December 12, 2014*)

DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 5, 2014. Dustin Cooper, Peter Harman, and Alexis Stevens appeared on behalf of the claimants. Donna Ferebee and Lee Scott appeared on behalf of the Department of Finance. Spencer Kenner appeared on behalf of the Department of Water Resources. Dorothy Holzem of the California Special Districts Association and Geoffrey Neill of the California State Association of Counties also appeared on behalf of interested persons and parties.

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 sections 17500 et seq., and related case law.

The Commission adopted the proposed decision to deny the test claim by a vote of six to zero.

Summary of the Findings

The Commission finds that the two original agricultural water supplier claimants named in each test claim, Richvale Irrigation District and Biggs-West Gridley Water District, are not eligible to claim reimbursement under article XIII B, section 6, because they do not collect or expend tax revenue, and are therefore not subject to the limitations of articles XIII A and XIII B. However, two substitute agricultural water supplier claimants, Oakdale Irrigation District and Glenn-Colusa Irrigation District, are subject to articles XIII A and XIII B and are therefore claimants eligible to seek reimbursement under article XIII B, section 6. As a result, the Commission has jurisdiction to hear and determine test claims 10-TC-12 and 12-TC-01.

The Commission finds that the Water Conservation Act of 2009 (Act), and the Agricultural Water Measurement regulations promulgated by the Department of Water Resources (DWR) to implement the Act, impose some new required activities on urban water suppliers and agricultural water suppliers, including measurement requirements, conservation and efficient water management requirements, notice and hearing requirements, and documentation requirements, with specified exceptions and limitations.

However, the Commission finds that several agricultural water suppliers are either exempted from the requirements of the test claim statutes and regulations or are subject to alternative and less expensive compliance alternatives because the activities were already required by a regime of federal statutes and regulations, which apply to most agricultural water suppliers within the state.[1]

Additionally, to the extent that the test claim statute and regulations impose any new state-mandated activities, they do not impose costs mandated by the state because the Commission finds that urban water suppliers and agricultural water suppliers possess fee authority, sufficient as a matter of law to cover the costs of any new required activities. Therefore, the test claim statute and regulations do not impose costs mandated by the state pursuant to Government Code section 17556(d), and are not reimbursable under article XIII B, section 6 of the California Constitution.

COMMISSION FINDINGS

I. Chronology

06/30/2011	Co-claimants, South Feather Water and Power Agency (South Feather), Paradise Irrigation District (Paradise), Biggs-West Gridley Water District (Biggs), and Richvale Irrigation District (Richvale) filed test claim 10-TC-12 with the Commission.[2]
10/07/2011	Department of Finance (Finance) requested an extension of time to file comments, which was approved.

[1] See Public Law 102-565 and the Reclamation Reform Act of 1982 and the specific exceptions and alternate compliance provisions in the test claim statutes for those subject to these federal requirements, as discussed in greater detail in the analysis below.

[2] Exhibit A, *Water Conservation Act* Test Claim, 10-TC-12.

12/06/2011	Department of Water Resources (DWR) requested an extension of time to file comments, which was approved.
02/01/2012	DWR requested an extension of time to file comments, which was approved.
03/30/2012	DWR requested an extension of time to file comments, which was approved.
05/30/2012	DWR requested an extension of time to file comments, which was approved.
08/02/2012	DWR requested an extension of time to file comments, which was approved.
10/02/2012	DWR requested an extension of time to file comments, which was approved.
12/03/2012	DWR requested an extension of time to file comments, which was approved.
12/07/2012	Finance requested an extension of time to file comments, which was approved.
02/04/2013	DWR requested an extension of time to file comments, which was approved.
02/06/2013	Finance requested an extension of time to file comments, which was approved.
02/28/2013	Richvale and Biggs filed test claim 12-TC-01 with the Commission.[3]
03/06/2013	The executive director consolidated the test claims for analysis and hearing, and renamed them *Water Conservation*.
03/29/2013	DWR requested an extension of time to file comments, which was approved.
06/07/2013	Finance submitted written comments on the consolidated test claims.[4]
06/07/2013	DWR submitted written comments on the consolidated test claims.[5]
07/09/2013	Claimants requested an extension of time to file rebuttal comments, which was approved.
08/07/2013	Claimants filed rebuttal comments.[6]
08/22/2013	Commission staff issued a request for additional information regarding the eligibility status of the claimants.[7]
09/19/2013	Finance submitted comments in response to staff's request.[8]
09/20/2013	The State Controller's Office (SCO) submitted a request for extension of time to comments, which was approved for good cause.
09/23/2013	DWR submitted comments in response to staff's request.[9]

[3] Exhibit B, *Agricultural Water Measurement* Test Claim, 12-TC-01.

[4] Exhibit C, Finance Comments on Consolidated Test Claims.

[5] Exhibit D, DWR Comments on Consolidated Test Claims.

[6] Exhibit E, Claimant Rebuttal Comments.

[7] Exhibit F, Request for Additional Information.

[8] Exhibit G, Finance Response to Commission Request for Comments.

09/23/2013	The claimants submitted comments in response to staff's request.[10]
10/07/2013	SCO submitted comments in response to staff's request.[11]
11/12/2013	Commission staff issued a Notice of Pending Dismissal of 12-TC-01, and a Notice of Opportunity for a Local Agency, Subject to the Tax and Spend Limitations of Articles XIII A and B of the California Constitution and Subject to the Requirements of the Alleged Mandate to Take Over the Test Claim by a Substitution of Parties.[12]
11/22/2013	Co-claimants Richvale and Biggs filed an appeal of the executive director's decision to dismiss test claim 12-TC-01.[13]
11/25/2013	The executive director issued notice that the appeal would be heard on March 28, 2014.[14]
01/13/2014	Oakdale Irrigation District (Oakdale) requested to be substituted in as a party to 10-TC-12 and 12-TC-01, and designated Dustin C. Cooper, of Minasian, Meith, Soares, Sexton & Cooper, LLP, as its representative.[15]
01/13/2014	Glenn-Colusa Irrigation District (Glenn-Colusa) requested to be substituted in as a party to 10-TC-12 and 12-TC-01, and designated Andrew M. Hitchings and Alexis K. Stevens of Somach, Simmons & Dunn as its representative.[16]
01/15/2014	Commission staff issued a Notice of Substitution of Parties and Notice of Hearing which mooted the appeal.[17]
07/31/2014	Commission staff issued a draft proposed statement of decision.[18]
08/13/2014	South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, and Biggs West Gridley Water District filed a request for an extension of time to comment and postponement of hearing to December 5, 2014, which was granted for good cause shown.

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[9] Exhibit H, DWR Response to Commission Request for Comments.

[10] Exhibit I, Claimant Response to Commission Request for Comments.

[11] Exhibit J, SCO Response to Commission Request for Comments.

[12] Exhibit K, Notice of Pending Dismissal.

[13] Exhibit L, Appeal of Executive Director's Decision.

[14] Exhibit M, Appeal of Executive Director Decision and Notice of Hearing.

[15] Exhibit N, Request for Substitution of Parties by Oakdale Irrigation District.

[16] Exhibit O, Request for Substitution of Parties by Glenn-Colusa Irrigation District.

[17] Exhibit P, Notice of Substitution of Parties and Notice of Hearing. Note that matters are only tentatively set for hearing until the draft staff analysis is issued which actually sets the matter for hearing pursuant to section 1187(b) of the Commission's regulations. Staff inadvertently omitted the word "tentative" in this notice.

[18] Exhibit Q, Draft Proposed Decision.

08/14/2014	Glenn Colusa Irrigation District filed a request for an extension of time to comment and postponement of hearing to December 5, 2014, which was granted for good cause shown.
10/16/2014	Claimant filed comments on the draft proposed decision.[19]
10/17/2014	California Special Districts Association (CSDA) filed comments on the draft proposed decision.[20]
10/17/2014	Environmental Law Foundation (ELF)filed comments on the draft proposed decision.[21]
10/17/2014	DWR filed comments on the draft proposed decision.[22]
10/22/2014	Northern California Water Association (NCWA) filed late comments on the draft proposed decision.[23]
11/07/2014	Claimants filed late comments.[24]

II. Background

These consolidated test claims allege that Water Code Part 2.55 [Sections 10608 through 10608.64] and Part 2.8 [Sections 10800 through 10853] enacted by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7) (10-TC-12) impose reimbursable state-mandated increased costs resulting from activities required of urban water suppliers and agricultural water suppliers. The claimants also allege that the Agricultural Water Measurement regulations issued by DWR (12-TC-01), codified at California Code of Regulations, title 23, sections 597-597.4, impose additional reimbursable state-mandated increased costs on agricultural water suppliers only.

The Water Conservation Act of 2009, pled in test claim 10-TC-12, calls for a 20 percent reduction in urban per capita water use on or before December 31, 2020, and an interim reduction of at least 10 percent on or before December 31, 2015.[25] In order to achieve these reductions, the Act requires urban retail water suppliers, both publicly and privately owned, to develop urban water use targets and interim targets that cumulatively result in the desired 20 percent reduction by December 31, 2020.[26] Prior to adopting its urban water use targets, each supplier is required to conduct at least one public hearing to allow community input regarding the supplier's implementation plan to meet the desired reductions, and to consider the economic

[19] Exhibit R, Claimant Comments on Draft Proposed Decision.

[20] Exhibit S, CSDA Comments on Draft Proposed Decision.

[21] Exhibit T, Environmental Law Foundation Comments on Draft Proposed Decision.

[22] Exhibit U, DWR Comments on Draft Proposed Decision.

[23] Exhibit V, NCWA Comments on Draft Proposed Decision.

[24] Exhibit W, Claimants Late Rebuttal Comments.

[25] Water Code section 10608.16 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[26] Water Code section 10608.20 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

impacts of the implementation plan.[27] This hearing may be combined with the hearing required under prior law (Water Code 10631) for adoption of the urban water management plan (UWMP).[28] An urban retail water supplier is also required to include in its UWMP, which is required to be updated every five years in accordance with pre-existing Water Code section 10621, information describing the baseline per capita water use; interim and final urban water use targets;[29] and a report on the supplier's progress in meeting urban water use targets.[30]

With respect to agricultural water suppliers, the Act requires implementation of specified critical efficient water management practices, including measuring the volume of water delivered to customers and adopting a volume-based pricing structure; and additional efficient water management practices that are locally cost effective and technically feasible.[31] In addition, the Act requires agricultural water suppliers (with specified exceptions)[32] to prepare and adopt, and every five years update, an agricultural water management plan (AWMP),[33] describing the service area, water sources and supplies, water uses within the service area, previous water management activities; and including a report on which efficient water management practices have been implemented or are planned to be implemented, and information documenting any determination that a specified efficient water management practice was not locally cost effective or technically feasible.[34]

Prior to preparing and adopting or updating an AWMP, the Act requires an agricultural water supplier to notify the city or county within which the supplier provides water that it will be preparing or considering changes to the AWMP;[35] and to make the proposed plan available for

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[27] Water Code section 10608.26 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[28] Exhibit X, Department of Water Resources, *Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan*, pp. A-2 and 3-4.

[29] Water Code section 10608.20 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[30] Water Code section 10608.40 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[31] Water Code section 10608.48 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[32] See Water Code sections 10608.8(d) (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)) [agricultural water suppliers that are parties to the Quantification Settlement Agreement, as defined in Statutes 2002, chapter 617 are exempt from the requirements of Part 2.55 (Water Code sections 10608-10608.64)]; 10608.48(f); 10828 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)) [an agricultural water supplier may meet requirements of AWMPs by submitting its water conservation plan approved by United States Bureau of Reclamation]; 10827 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)) [members of Agricultural Water Management Council and submit water management plans to council pursuant to the Memorandum of Understanding may rely on those plans to satisfy AWMP requirements]; 10829 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)) [adoption of an urban water management plan or participation in an areawide, regional, watershed, or basinwide water management plan will satisfy the AWMP requirements].

[33] Water Code section 10820 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[34] Water Code sections 10608.48; 10820 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[35] Water Code section 10821 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

public inspection and hold a noticed public hearing.[36] An agricultural water supplier is then required to implement the AWMP in accordance with the schedule set forth in the AWMP;[37] and to submit a copy of the AWMP to DWR and a number of specified local entities, and make the plan available on the internet, within 30 days of adoption.[38]

Finally, to aid agricultural water suppliers in complying with their measurement requirements and developing a volume-based pricing structure as required by section 10608.48, DWR adopted in 2012 the Agricultural Water Measurement Regulations,[39] which are the subject of test claim 12-TC-01. These regulations provide a range of options for agricultural water suppliers to implement accurate measurement of the volume of water delivered to customers. The regulations provide for measurement at the delivery point or farm gate of an individual customer, or at a point upstream of the delivery point where necessary, and provide for specified accuracy standards for measurement devices employed by the supplier, whether existing or new, as well as field testing protocols and recordkeeping requirements, to ensure ongoing accuracy of volume measurements.

To provide some context for how the the test claim statute and implementing regulations fit into the state's water conservation planning efforts, a brief discussion of the history of water conservation law in California follows.

A. Prior California Conservation and Water Supply Planning Requirements.

1. Constitutional and Statutory Framework of Water Conservation.

Article X, section 2 of the California Constitution prohibits the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water. It also declares that the conditions in the state require "that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." Moreover, article X, section 2 provides that "[t]he right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and *such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water*."[40] Although article X, section 2 provides that it is self-executing; it also provides that the Legislature may enact statutes to advance its policy.

The Legislature has implemented these constitutional provisions in a number of enactments over the course of many years, which authorize water conservation programs by water suppliers, including metered pricing. For example:

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[36] Water Code section 10841 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[37] Water Code section 10842 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[38] Water Code sections 10843; 10844 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[39] Code of Regulations, title 23, sections 597-597.4 (Register 2012, No. 28).

[40] Adopted June 8, 1976. Derivation, former article 14, section 3, added November 6, 1928 and amended November 5, 1974 [emphasis added].

- Water Code section 1009 provides that water conservation programs are an authorized water supply function for all municipal water providers in the state.[41]
- Water Code section 1011 furthers the water conservation policies of the state by providing that a water appropriator does not lose an appropriative water right because of water conservation programs. [42]
- Water Code sections 520 -529.7 require water meters and recognize that metered water rates are an important conservation tool.[43]
- Water Code section 375(b) provides that public water suppliers may encourage conservation through "rate structure design." The bill amending the Water Code to add this authority was adopted during the height of a statewide drought. In an uncodified portion of the bill, the Legislature specifically acknowledged that conservation is an important part of the state's water policy and that water conservation pricing is a best management practice.[44]
- Water Code sections 370-374 provide additional, alternate authority (in addition to a water supplier's general authority to set rates) for public entities to encourage conservation rate structure design consistent with the proportionality requirements of Proposition 218.[45]
- Water Code section 10631(f)(1)(K) establishes water conservation pricing as a recognized water demand management measure for purposes of UWMPs, and other conservation measures including metering, leak detection and retrofits for pipes and plumbing fixtures.[46]

In addition, the Legislature has long vested water districts with broad authority to manage water to furnish a sustained, reliable supply. For example:

[41] Statutes 1976, chapter 709, p. 1725, section 1.

[42] Added by statutes 1979, chapter 1112, p. 4047, section 2, amended by Statutes, 1982, chapter 876, p. 3223, section 4, Statutes 1996, chapter 408, section 1, and Statutes 1999, chapter 938, section 2.

[43] Added by Statutes 1991, chapter 407 and amended by Statutes 2004, chapter 884, section 3 and Statutes 2005, chapter 22. See especially, Water Code section 521 (b) and (c)).

[44] Statutes 1993, chapter 313, section 1.

[45] Statutes 2008, chapter 610 (AB 2882). See Exhibit X, Senate Floor Analysis AB 2882; Assembly Floor Analysis AB 2882.

[46] Water Code section 10631(f)(1)(K) (Stats. 1995, ch. 854 (SB 1011); Stats. 2000, ch. 712 (SB 553); Stats. 2001, ch. 643 (SB 610); Stats. 2001, ch. 644 (AB 901); Stats. 2002, ch. 664 (AB 3034); Stats. 2002, ch. 969 (SB 1384); Stats. 2004, ch. 688 (SB 318); Stats. 2006, ch. 538 (SB 1852)).

- Irrigation Districts have the power to take any act necessary to furnish sufficient water for beneficial uses and to control water.[47] They have general authority to fix and collect charges for any service of the district.[48]
- County Water Districts have similar power to take any act necessary to furnish sufficient water and express authority to conserve.[49]
- Municipal Water Districts also have broad power to control water for beneficial uses and express power to conserve.[50]

2. Existing Requirements to Prepare, Adopt, and Update Urban Water Management Plans.

The Urban Water Management Act of 1983 required urban water suppliers to prepare and update an UWMP every five years.[51] This Act has been amended numerous times between its original enactment in 1983 and the enactment of the test claim statute in 2009.[52] The law pertaining to UWMPs in effect immediately prior to the enactment of the test claim statute consisted of sections 10610 through 10657 of the California Water Code, which detail the information that must be included in UWMPs, as well as who must file them.

According to the Act, as amended prior to the test claim statute, "[t]he conservation and efficient use of urban water supplies are of statewide concern; however, the planning for that use and the implementation of those plans can best be accomplished at the local level."[53] The Legislature declared as state policy that:

> (a) The management of urban water demands and efficient use of water shall be actively pursued to protect both the people of the state and their water resources.
>
> (b) The management of urban water demands and efficient use of urban water supplies shall be a guiding criterion in public decisions.

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[47] Water Code section 22075 added by Statutes 1943, chapter 372 and section 22078 added by Statutes 1953, chapter 719, p. 187, section 1.

[48] Water Code section 22280, as amended by statutes 2007, chapter 27, section 19.

[49] Water Code sections 31020 and 31021 added by Statutes 1949, chapter 274, p. 509, section 1.

[50] Water Code sections 71610 as amended by Statutes 1995, chapter 28 and 71610.5 as added by Statutes 1975, chapter 893, p. 1976, section 1.

[51] Statutes 1983, chapter 1009 added Part 2.6 to Division 6 of the Water Code, commencing at section 10610.

[52] Enacted, Statutes 1983, chapter 1009; Amended, Statutes 1990, chapter 355 (AB 2661); Statutes 1991-92, 1st Extraordinary Session, chapter 13 (AB 11); Statutes 1991, chapter 938 (AB 1869) Statutes 1993, chapter 589 (AB 2211); Statutes 1993, chapter 720 (AB 892); Statutes 1994, chapter 366 (AB 2853); Statutes 1995, chapter 28 (AB 1247); Statutes 1995, chapter 854 (SB 1011); Statutes 2000, chapter 712 (SB 553); Statutes 2001, chapter 643 (SB 610); Statutes 2001, chapter 644 (AB 901); Statutes 2002, chapter 664 (AB 3034); Statutes 2002, chapter 969 (SB 1384); Statutes 2004, chapter 688 (SB 318); Statutes 2006, chapter 538 (SB 1852); Statutes 2009, chapter 534 (AB 1465).

[53] Water Code section 10610.2 (Stats. 2002, ch. 664 (AB 3034)).

(c) Urban water suppliers shall be required to develop water management plans to actively pursue the efficient use of available supplies.[54]

The Act specified that each urban water supplier that provides water for municipal purposes either directly or indirectly to more than 3,000 customers or supplies more than 3,000 acre feet of water annually shall prepare, update, and adopt its urban water management plan at least once every five years on or before December 31, in years ending in five and zero.[55]

a. Contents of Plans

The required contents of an UWMP are provided in sections 10631 through 10635. These statutes are prior law and have not been pled in this test claim. As last amended by Statutes 2009, chapter 534 (AB 1465), section 10631 requires that an adopted UWMP contain information describing the service area of the supplier, reliability of supply, water uses over five year increments, water demand management measures currently being implemented or being considered or scheduled for implementation, and opportunities for development of desalinated water.[56] Section 10631 further provides that urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," may submit those annual reports to satisfy the requirements of section 10631(f) and (g), pertaining to current, proposed, and future demand management measures.[57]

Section 10632 requires that an UWMP provide an urban water shortage contingency analysis, which includes actions to be taken in response to a supply shortage; an estimate of minimum supply available during the next three years; actions to be taken in the event of a "catastrophic interruption of water supplies," such as a natural disaster; additional prohibitions employed during water shortages; penalties or charges for excessive use; an analysis of impacts on revenues and expenditures; a draft water shortage contingency resolution or ordinance; and a mechanism for determining actual reductions in water use.[58]

Section 10633, as amended by Statutes 2002, chapter 261, specifies that the plan shall provide, to the extent available, information on recycled water and its potential for use as a water source in the service area of the urban water supplier. The preparation of the plan shall be coordinated with local water, wastewater, groundwater, and planning agencies that operate within the supplier's service area, and shall include: a description of wastewater collection and treatment systems; a description of the quantity of treated wastewater that meets recycled water standards; a description of recycled water currently used in the supplier's service area; a description and quantification of the potential uses of recycled water; projected use of recycled water over five year increments for the next 20 years; a description of actions that may be taken to encourage the

[54] Water Code section 10610.4 (Stats. 1983, ch. 1009; Stats. 1995, ch. 854 (SB 1011)).

[55] Water Code sections 10617 (Stats. 1996, ch. 1023(SB 1497)); 10621(a) (Stats. 2007, ch. 64 (AB 1376)).

[56] Water Code section 10631 (Statutes 2009, chapter 534 (AB 1465)).

[57] Water Code section 10631(i) (Statutes 2009, chapter 534 (AB 1465)).

[58] Water Code section 10632 (Stats. 1995, ch. 854 (SB 1011)).

use of recycled water; and a plan for optimizing the use of recycled water in the supplier's service area.[59]

As added by Statutes 2001, chapter 644, and continuously in law up to the adoption of the test claim statute, section 10634 requires the UWMP to include, to the extent practicable, information relating to the quality of existing sources of water available to the supplier over the same five-year increments as described in Section 10631(a); and to describe the manner in which water quality affects water management strategies and supply reliability.[60]

And finally, section 10635, added by Statutes 1995, chapter 330, requires an urban water supplier to include in its UWMP an assessment of the reliability of its water service to customers during normal and dry years, projected over the next 20 years, in five year increments.[61]

b. Adoption and Implementation of Plans

Sections 10640 through 10645, as added by Statutes 1983, chapter 1009 and Statutes 1990, chapter 355, provide the requirements for adoption and implementation of UWMPs, including public notice and recordkeeping requirements associated with the adoption of each update of the UWMP.

Section 10640 provides that every urban water supplier required to prepare an UWMP pursuant to this part shall prepare its UWMP pursuant to Article 2 (commencing with Section 10630), and shall "periodically review the plan … and any amendments or changes required as a result of that review shall be adopted pursuant to this article."[62] Section 10641 provides that an urban water supplier required to prepare an UWMP may consult with, and obtain comments from, any public agency or state agency or any person who has special expertise with respect to water demand management methods and techniques.[63]

Section 10642 provides that each urban water supplier shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the service area prior to and during the preparation of its UWMP. Prior to adopting an UWMP, the urban water supplier shall make the plan available for public inspection and shall hold a public hearing thereon. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned water supplier pursuant to section 6066 of the Government Code. A privately owned water supplier is required to provide a similar degree of notice, and the plan shall be adopted after the hearing either "as prepared or as modified…"[64]

Section 10643 provides that an UWMP shall be implemented "in accordance with the schedule set forth in [the] plan."[65] As amended by Statutes 2007, chapter 628, section 10644 requires an

[59] Water Code section 10633 (Stats. 2002, ch. 261 (SB 1518)).

[60] Water Code section 10634 (Stats. 2001, ch. 644 (AB 901)).

[61] Water Code section 10635 (Stats. 1995, ch. 330 (AB 1845)).

[62] Water Code section 10640 (Stats. 1983, ch. 1009).

[63] Water Code section 10640 (Stats. 1983, ch. 1009; Stats. 1995, ch. 854 (SB 1011)).

[64] Water Code section 10642 (Stats. 1983, ch. 1009; Stats. 1995, ch. 854 (SB 1011); Stats. 2000, ch. 297 (AB 2552)).

[65] Water Code section 10643 (Stats. 1983, ch. 1009).

urban water supplier to submit to DWR, the State Library, and any city or county within which the supplier provides water supplies, a copy of its plan and copies of any changes or amendments to the plans no later than 30 days after adoption. Section 10644 also requires DWR to prepare and submit to the Legislature, on or before December 31, in the years ending in six and one, a report summarizing the status of the UWMPs adopted pursuant to this part. The report is required to identify the outstanding elements of the individual UWMPs. DWR is also required to provide a copy of the report to each urban water supplier that has submitted its UWMP to DWR.[66] And lastly, in accordance with section 10645, not later than 30 days after filing a copy of its UWMP with DWR, the urban water supplier and DWR shall make the plan available for public review during normal business hours.[67]

c. Miscellaneous Provisions Pertaining to the UWMP Requirement

While sections 10631 through 10635 provide for the lengthy and technical content requirements of UWMPs, and sections 10640 through 10645 provide the requirements of a valid adoption of a UWMP, several remaining provisions of the Urban Water Management Planning Act provide for the satisfaction of the UWMP requirements by other means, and provide for the easing of certain other regulatory requirements and the recovery of costs.

- Section 10631, as amended by Statutes 2009, chapter 534 (AB 1465), provides that urban water suppliers that are members of the California Urban Water Conservation Council shall be deemed in compliance with the demand management provisions of the UWMP "by complying with all the provisions of the 'Memorandum of Understanding Regarding Urban Water Conservation in California'…and by submitting the annual reports required by Section 6.2 of that memorandum."[68] These suppliers, then, are not separately required to comply with sections 10631(f) and (g), which require a description and evaluation of the supplier's "demand management measures" that are currently or could be implemented.[69]
- Section 10652 streamlines the adoption of UWMPs by exempting plans from the California Environmental Quality Act (CEQA). However, section 10652 does not exempt any project (that might be contained in the plan) that would significantly affect water supplies for fish and wildlife.[70]
- Section 10653 provides that the adoption of a plan shall satisfy any requirements of state law, regulation, or order, including those of the State Water Resources Control Board and the Public Utilities Commission, for the preparation of water

[66] Water Code section 10644 (Stats. 1983, ch. 1009; Stats. 1990, ch. 355 (AB 2661); Stats. 1992, ch. 711 (AB 2874); Stats. 1995, ch. 854 (SB 1011); Stats. 2000, ch. 297 (AB 2552); Stats. 2004, ch. 497 (AB 105); Stats. 2007, ch. 628 (AB 1420)).

[67] Water Code section 10645 (Stats. 1990, ch. 355 (AB 2661)).

[68] Water Code section 10631 (as amended, Stats. 2009, ch. 534 (AB 1465)).

[69] Water Code section 10631(f-g) (as amended, Stats. 2009, ch. 534 (AB 1465)).

[70] Water Code section 10652 (Stats. 1983, ch. 1009; Stats. 1991-1992, 1st Ex. Sess., ch. 13 (AB 11); Stats. 1995, ch. 854 (SB 1011)).

management plans or conservation plans; provided, that if the State Water Resources Control Board or the Public Utilities Commission requires additional information concerning water conservation to implement its existing authority, nothing in this part shall be deemed to limit the board or the commission in obtaining that information. In addition, section 10653 provides that "[t]he requirements of this part *shall be satisfied by any urban water demand management plan prepared to meet federal laws or regulations after the effective date of this part*, and which substantially meets the requirements of this part, or by any existing urban water management plan which includes the contents of a plan required under this part."[71] The plain language of section 10653 therefore exempts an urban retail water supplier that is already required to prepare a water demand management plan from any requirements of an UWMP added by the test claim statutes.

- Section 10654 provides expressly that an urban water supplier "may recover in its rates the costs incurred in preparing its plan and implementing the reasonable water conservation measures included in the plan." Any best water management practice that is included in the plan that is identified in the "Memorandum of Understanding Regarding Urban Water Conservation in California" (discussed below) is deemed to be reasonable for the purposes of this section.[72] Therefore, suppliers are expressly authorized to recover the costs of implementing "reasonable water conservation measures" or any "best water management practice…identified in [the MOU for Urban Water Conservation]."

3. Prior Requirements to Prepare, Adopt, and Update Agricultural Water Management Plans, Which Became Inoperative by their own Terms in 1993.

The Agricultural Water Management Planning Act was enacted in 1986 and became inoperative, by its own terms, in 1993.[73] The 1986 Act stated in its legislative findings and declarations that "[t]he Constitution requires that water in the state be used in a reasonable and beneficial way…" and that "[t]he conservation of agricultural water supplies are of great concern." The findings and declarations further stated that "[a]gricultural water suppliers that receive water from the federal Central Valley Water Project are required by federal law to develop and implement water conservation plans," as are "[a]gricultural water suppliers applying for a permit to appropriate water from the State Water Resources Control Board…" Therefore, the act stated that "it is the policy of the state as follows:"

(a) The conservation of water shall be pursued actively to protect both the people of the state and their water resources.

(b) The conservation of agricultural water supplies shall be an important criterion in public decisions on water.

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[71] Water Code section 10653 (Stats. 1983, ch. 1009; Stats. 1995, ch. 854 (SB 1011)) [emphasis added].

[72] Water Code section 10654 (Stats. 1983, ch. 1009; Stats. 1994, ch. 609 (SB 1017)).

[73] Statutes 1986, chapter 954 (AB1658). See Former Water Code section 10855 (Stats. 1986, ch. 954 (AB 1658)).

(c) Agricultural water suppliers, who determine that a significant opportunity exists to conserve water or reduce the quantity of highly saline or toxic drainage water, shall be required to develop water management plans to achieve conservation of water.[74]

Specifically, the 1986 Act provided that every agricultural water supplier serving water directly to customers "shall prepare an informational report based on information from the last three irrigation seasons on its water management and conservation practices…" That report "shall include a determination of whether the supplier has a significant opportunity to conserve water or reduce the quantity of highly saline or toxic drainage water through improved irrigation water management…" If a "significant opportunity exists" to conserve water or improve the quality of drainage water, the supplier "shall prepare and adopt an agricultural water management plan…" (AWMP).[75] The Act provided, however, that an agricultural water supplier "may satisfy the requirements of this part by participation in areawide, regional, watershed, or basinwide agricultural water management planning where those plans will reduce preparation costs and contribute to the achievement of conservation and efficient water use and where those plans satisfy the requirements of this part." The requirements of an AWMP or an informational report, where required, included quantity and sources of water delivered to and by the supplier; other sources of water used within the service area, including groundwater; a general description of the delivery system and service area; total irrigated acreage within the service area; acreage of trees and vines within the service area; an identification of current water conservation practices being used, plans for implementation of water conservation practices, and conservation educational practices being used; and a determination of whether the supplier has a significant opportunity to save water by means of reduced evapotranspiration, evaporation, or reduction of flows to unusable water bodies, or to reduce the quantity of highly saline or toxic drainage water.[76] In addition, an AWMP "shall address all of the following:" quantity and source of surface and groundwater delivered to and by the supplier; a description of the water delivery system, the beneficial uses of the water supplied, conjunctive use programs, incidental and planned groundwater recharge, and the amounts of delivered water that are lost to evapotranspiration, evaporation, or surface flow or percolation; an identification of cost-effective and economically feasible measures for water conservation; an evaluation of other significant impacts; and a schedule to implement those water management practices that the supplier determines to be cost-effective and economically feasible.[77]

The Act further provided that an agricultural water supplier required to prepare an AWMP "may consult with, and obtain comments from, any public agency or state agency or any person who has special expertise with respect to water conservation and management methods and techniques."[78] And, "[p]rior to adopting a plan, the agricultural water supplier shall make the plan available for public inspection and shall hold a public hearing thereon." This requirement

[74] Former Water Code section 10802 (Stats. 1986, ch. 954 (AB 1658)).

[75] Former Water Code section 10821 (as added, Stats. 1986, ch. 954 (AB 1658)).

[76] Former Water Code section 10825 (as added, Stats. 1986, ch. 954 (AB 1658)).

[77] Former Water Code section 10826 (as added, Stats. 1986, ch. 954 (AB 1658)).

[78] Former Water Code section 10841(as added, Stats. 1986, ch. 954 (AB 1658)).

applies also to privately owned water suppliers.[79] In addition, the Act states that an agricultural water supplier shall implement its AWMP in accordance with the schedule set forth in the plan, and "shall file with [DWR] a copy of its plan no later than 30 days after adoption."[80] Finally, the 1986 Act provided for funds to be appropriated to prepare the informational reports and agricultural water management plans, as required, and provided that "[t]his part shall remain operative only until January 1, 1993, except that, if an agricultural water supplier fails to submit its information report or agricultural water management plan prior to January 1, 1993, this part shall remain operative with respect to that supplier until it has submitted its report or plan, or both."[81]

As noted above, the AWMP requirements provided by the Agricultural Water Management Planning Act became inoperative as of January 1, 1993,[82] and therefore do not constitute the law in effect immediately prior to the test claim statute, even though, as shown below, the test claim statute reenacted substantially similar plan requirements. However, the federal requirement to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the federal Central Valley Project Improvement Act (Public Law 102-565) or the federal Reclamation Reform Act of 1982, remained the law throughout and does constitute the law in effect immediately prior to the test claim statute, with respect to those suppliers subject to one or both federal requirements.[83]

4. The Water Measurement Law, Statutes 1991, chapter 407, applicable to Urban and Agricultural Water Suppliers.

The Water Measurement Law (Water Code sections 510-535) requires standardized water management practices and water measurement, and is applicable to Urban and Agricultural Water Suppliers, as follows:[84]

- Every water purveyor that provides potable water to 15 or more service connections or 25 or more yearlong residents must require meters as a condition of *new* water service.[85]
- Urban water suppliers, except those that receive water from the federal Central Valley Project, must install meters on all municipal (i.e., residential and governmental) and industrial (i.e., commercial) service connections on or before January 1, 2025 and shall charge each customer that has a service connection for which a meter has been installed based on the actual volume of deliveries beginning on or before January 1, 2010 service. A water purveyor, including an

[79] Former Water Code section 10842(as added, Stats. 1986, ch. 954 (AB 1658)).

[80] Former Water Code sections 10843 and 10844 (as added, Stats. 1986, ch. 954 (AB 1658)).

[81] Former Water Code sections 10853; 10854; 10855 (as added, Stats. 1986, ch. 954 (AB 1658)).

[82] Former Water Code section 10855 (Stats. 1986, ch. 954 (AB 1658)).

[83] See Water Code section 10828 (added, Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[84] The Water Measurement Law was added by Statutes 1991, chapter 407.

[85] Section 525 as amended by statutes 2005, chapter 22.

urban water supplier, may recover the cost of the purchase, installation, and operation of a water meter from rates, fees, or charges.[86]

- Urban water suppliers receiving water from the federal Central Valley Project (CVP) shall install water meters on all residential and non-agricultural commercial service connections constructed prior to 1992 on or before January 1, 2013 and charge customers for water based on the actual volume of deliveries, as measured by a water meter, beginning March 1, 2013, or according to the CVP water contract. Urban water suppliers that receive water from the CVP are also specifically authorized to "recover the cost of providing services related to the purchase, installation, and operation and maintenance of water meters from rates, fees or charges.[87]
- Agricultural water providers shall report annually to DWR summarizing aggregated farm-gate delivery data, on a monthly or bi-monthly basis. However, the Water Measurement Law does not require implementation of water measurement programs or practices that are not locally cost effective.[88]

The test claim statute, as noted above, requires agricultural water suppliers to measure the volume of water delivered to customers and to adopt a volume-based pricing structure. However, the test claim statute also contemplates a water supplier that is both an agricultural and an urban water supplier, by definition: section 10829 provides that an agricultural water supplier may satisfy the AWMP requirements by adopting an UWMP pursuant to Part 2.6 of Division 6 of the Water Code; and the definitions of "agricultural" and "urban retail" water suppliers in section 10608.12 are not, based on their plain language, mutually exclusive. The record on this test claim is not sufficient to determine how many, if any, agricultural water suppliers are also urban retail water suppliers,[89] and consequently would be required to install water meters on new and existing service connections in accordance with Water Code sections 525-527, and to charge customers based on the volume of water delivered. In addition, the record is not sufficient to determine whether and to what extent some agricultural water suppliers may already have implemented water measurement programs which were locally cost effective, in accordance with section 531.10. However, to the extent that an agricultural water supplier is also an urban water supplier, sections 525-527 may constitute a prior law requirement to accurately measure water delivered and charge customers based on volume, and the test claim statute may not impose new requirements or costs on some entities. And, to the extent that water measurement programs or practices were previously implemented pursuant to section 531.10, some of the activities required by the test claim statute and regulations may not be newly required, with respect to certain agricultural suppliers. These caveats and limitations are noted where relevant in the analysis below.

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[86] Section 527 as amended by statutes 2005, chapter 22.

[87] Section 526 as amended by Statutes 2004, chapter 884.

[88] Section 531.10 as added by Statutes 2007, chapter 675.

[89] See Water Code section 10608.12, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7) for definitions of "agricultural water supplier" and "urban retail water supplier."

III. Positions of the Parties

A. Claimants' Positions:

The four original claimants together alleged a total of $72,194.48 in mandated costs for fiscal year 2009-2010 (although Paradise maintains a different fiscal year than the remaining claimants). In addition, claimants project that program costs for fiscal year 2010-2011, and for 2011-2012, will be "higher," but claimants allege that they are unable to reasonably estimate the amount.

South Feather Water and Power Agency and Paradise Irrigation District

South Feather and Paradise allege that they are urban retail water suppliers, as defined in Water Code section 10608.12. As such, they allege that they are required to establish urban water use targets "by July 1, 2011 by selecting one of four methods to achieve the mandated water conservation." South Feather and Paradise further allege that they are "mandated to adopt expanded and more detailed urban water management plans in 2010 that include the baseline daily per capita water use, urban water use target, interim urban water use target, compliance daily per capita water use, along with the bases for determining estimates, including supporting data."[90] South Feather and Paradise allege that thereafter, UWMPs are to be updated "in every year ending in 5 and 0," and the 2015 plan "must describe the urban retail water supplier's progress towards [*sic*] achieving the 20% reduction by 2020."[91] Finally, South Feather and Paradise allege that they are required to conduct at least one noticed public hearing to allow community input, consider economic impacts, and adopt a method for determining a water use baseline "from which to measure the 20% reduction."[92]

Prior to the Act, South Feather and Paradise allege that there was no requirement to achieve a 20 percent per capita reduction in water use by 2020. They allege that they were required to adopt UWMPs prior to the Act, but not to include 'the baseline per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with bases for determining those estimates, including supporting data."[93] And they allege that "[f]inally, prior to the Act, there was no requirement to conduct at least one public hearing to allow for community input regarding conservation, consider economic impacts…or to adopt a method for determining an urban water use target."[94]

Biggs-West Gridley Water District and Richvale Irrigation District

Richvale and Biggs allege that they are required to "measure the volume of water delivered to their customers using best professional practices to achieve a minimum level of measurement accuracy at the farm-gate," in accordance with regulations adopted by DWR pursuant to the Act.[95] They further allege that they are required to adopt a pricing structure for water customers

[90] Exhibit A, 10-TC-12, page 3.

[91] *Ibid*.

[92] Exhibit A, 10-TC-12, page 4.

[93] Exhibit A, 10-TC-12, pages 7-8.

[94] Exhibit A, 10-TC-12, page 8.

[95] Exhibit A, 10-TC-12, page 4.

based on the quantity of water delivered, and that "[b]ecause Richvale and Biggs are local public agencies, the change in pricing structure would have to be authorized and approved by its [*sic*] customers through the Proposition 218 process."[96]

In addition, Richvale and Biggs allege that "[i]f 'locally cost effective' and technically feasible, agricultural water suppliers are required to implement fourteen additional efficient management practices," as specified. They additionally allege that on or before December 31, 2012, they are required to prepare AWMPs that include a report on the implementation and planned implementation of efficient water management practices, and documentation supporting any determination made that certain conservation measures were held to be not locally cost effective or technically feasible.[97] Finally, Richvale and Biggs allege that prior to adoption of an AWMP, they are required to notice and hold a public hearing; and that after adoption the plan must be distributed to "various entities" and posted on the internet for public review.[98]

Prior to the Act, Richvale and Biggs assert, agricultural water suppliers "were not required to have a pricing structure based, at least in part, on the quantity of water delivered." In addition, prior to the Act, "there was no requirement to implement up to 14 additional conservation measures if locally cost effective and technically feasible." And, Richvale and Biggs allege that prior to the Act the number of agricultural water suppliers subject to the requirement to develop an AWMP was significantly fewer, and now the "contents of the plans" are "more encompassing than plans required under the former law."[99] Richvale and Biggs allege that "[f]inally, prior to the Act, there was no requirement to conduct at least one public hearing prior to adopting the plan, make copies of it available for public inspection, or to publish the time and place of the hearing once per week for two successive weeks in a newspaper of general circulation."[100]

As discussed below, in the early stages of Commission staff's review and analysis of these consolidated test claims, it became apparent that Richvale and Biggs, the two claimants representing agricultural water suppliers, are not subject to the revenue limits of article XIII B, and do not collect or expend "proceeds of taxes," within the meaning of articles XIII A and XIII B.[101] After additional briefing and further review, it was concluded that Richvale and Biggs are indeed not eligible for reimbursement under article XIII B, section 6. The Commission's executive director therefore issued a notice of pending dismissal and offered an opportunity for another eligible local claimant, subject to the tax and spend limitations of articles XIII A and XIII B, to take over the test claim.[102] Richvale and Biggs filed an appeal of that decision, and maintain that they are eligible local government claimants pursuant to Government Code section 17518, and that the fees or assessments that the districts would be required to establish or increase to comply with the requirements of the test claim statute and regulations would be

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[96] *Ibid*.

[97] Exhibit A, 10-TC-12, pages 4-6.

[98] Exhibit A, 10-TC-12, page 6.

[99] Exhibit A, 10-TC-12, page 8.

[100] Exhibit A, 10-TC-12, page 9.

[101] Exhibit F, Commission Request for Additional Information, page 1.

[102] Exhibit K, Notice of Pending Dismissal.

characterized as taxes under article XIII B, section 8, because such fees or assessments would exceed the reasonable costs of providing water services.[103] This decision addresses these issues.

Glenn-Colusa Irrigation District and Oakdale Irrigation District

Glenn-Colusa and Oakdale requested to be substituted in as parties to these consolidated test claims, in place of Richvale and Biggs.[104] Both Glenn-Colusa and Oakdale submitted declarations asserting that they receive an annual share of property tax revenue, and therefore are subject to articles XIII A and XIII B of the California Constitution. Both additionally allege that they incur at least $1000 in increased costs as a result of the test claim statute and regulations, and that they are subject to the requirements of the test claim statutes and regulations as described in the test claim narrative.[105]

Claimants' Collective Response to the Draft Proposed Decision

In comments on the draft proposed decision, the claimants focus primarily on the findings regarding the ineligibility of Richvale and Biggs to claim reimbursement based on the evidence in the record indicating that neither agency collects or expends tax revenues subject to the limitations of articles XIII A and XIII B. The claimants also address the related findings that all claimants have sufficient fee authority under law to cover the costs of the mandate, and thus the Commission cannot find costs mandated by the state, pursuant to section 17556(d).

Specifically, the claimants argue that "[f]ees and charges for sewer, water, or refuse collection services are excused from the formal election process, but not from the majority protest process."[106] Therefore, claimants conclude that "[a]gencies that provide water, sewer, or refuse collection services, including Claimants, lack sufficient authority to unilaterally impose new or increased fees or charges in light of Proposition 218's majority protest procedure."[107]

In addition, claimants note the Commission's analysis in 07-TC-09, *Discharge of Stormwater Runoff*, and argue that the Commission should not "ignore a prior Commission decision that is directly on point…" The claimants assert that "as this Commission has already recognized…" Proposition 218 "created a legal barrier to establishing or increasing fees or charges…" and as a result claimants "can do no more than merely propose new or increased fees for customer approval and the customers have the authority to then accept or reject…" a fee increase.[108]

The claimants assert that the reasoning of the draft proposed decision "would prohibit state subvention for every enterprise district in the state that is subject to Proposition 218..."[109] and "would create a class of local agencies that are per se ineligible for reimbursement under this test

[103] Exhibit L, Appeal of Executive Director's Decision.

[104] Exhibit N, Request for Substitution of Parties by Oakdale Irrigation District; Exhibit O, Request for Substitution of Parties by Glenn-Colusa Irrigation District.

[105] *Ibid.*

[106] Exhibit R, Claimant Comments on Draft Proposed Decision, page 10.

[107] Exhibit R, Claimant Comments on Draft Proposed Decision, page 11.

[108] Exhibit R, Claimant Comments on Draft Proposed Decision, page 11.

[109] Exhibit R, Claimant Comments on Draft Proposed Decision, page 14.

claim, all potential future test claims, and all previous test claims dating back to Proposition 218's passage in 1996."[110] The claimant calls this a "sea change in Constitutional interpretation…"[111]

The claimants argue, based on this interpretation of the effect of Proposition 218, that the draft proposed decision inappropriately excluded Richvale and Biggs from subvention, "because they do not currently collect or expend tax revenues."[112] The claimants argue that "this additional 'requirement' [is] based on an outdated case that predates Proposition 218 and on an inapplicable line of cases that apply only to redevelopment agencies, while ignoring the strong policy underlying the voters' approval of the subvention requirement."[113] The claimants argue that after articles XIII C and XIII D, "assessments and property-related fees and charges have joined tax revenues as among local entities' 'increasingly limited revenue sources…'"[114]

The claimants further argue that: "Agencies like Richvale and Biggs that need additional revenue to pay for new mandates but are subject to the limitations of Proposition 218 are faced with three problematic options: (a) do not implement the mandates in light of revenue limitations; (b) implement the mandates with existing revenue; or (c) propose a new or increased fee or charge, assessment, or special tax to implement the mandates."[115] The claimants argue for the Commission to take action to expand the scope of reimbursement: "the subvention provision should be read in harmony with later Constitutional enactments and protect not just tax revenue, but assessment and fee revenue as well."[116]

Finally, in late comments, the claimants challenge DWR's reasoning, including the figures cited by the department, that due to the existence of a substantial number of private water suppliers, the test claim statutes do not impose a "program" within the meaning of article XIII B, section 6.[117]

B. State Agency Positions:

Department of Finance

Finance maintains that "the Act and Regulations do not impose a reimbursable mandate on local agencies within the meaning of Article XIII B, section 6."[118] Finance asserts that each of the claimants is a special district authorized to charge a fee for delivery of water to its users, and therefore has the ability to cover the costs of any new required activities.[119] Finance further

[110] Exhibit R, Claimant Comments on Draft Proposed Decision, page 15.

[111] Exhibit R, Claimant Comments on Draft Proposed Decision, page 15.

[112] Exhibit R, Claimant Comments on Draft Proposed Decision, page 15.

[113] Exhibit R, Claimant Comments on Draft Proposed Decision, page 16.

[114] Exhibit R, Claimant Comments on Draft Proposed Decision, page 17.

[115] Exhibit R, Claimant Comments on Draft Proposed Decision, page 20.

[116] Exhibit R, Claimant Comments on Draft Proposed Decision, page 21.

[117] Exhibit W, Claimant Late Comments, pages 1-4.

[118] Exhibit C, Finance Comments, page 1.

[119] Exhibit C, Finance Comments, page 1.

asserts that the conservation efforts required by the test claim statute and regulations will result in surplus water accruing to the claimant districts, which are authorized to sell water. Finance concludes that "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."[120] Moreover, Finance argues 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…*and only when the mandated costs in question can be recovered solely from the proceeds of taxes*."[121] Finance argues that 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."[122] Finance did not submit comments on the draft proposed decision.

State Controller's Office

In response to Commission staff's request for additional information regarding the uncertain eligibility of the test claimants, the SCO submitted written comments confirming that the "Butte County Auditor-Controller has confirmed for fiscal years 2010-2011, 2011-2012, and 2012-2013," that South Feather and Paradise both received proceeds of taxes, but Richvale and Biggs did not.[123] However, the SCO also noted that none of the four claimants reported an appropriations limit for fiscal years 2010-2011, 2011-2012, and 2012-2013. The SCO stated that "Government Code section 7910 requires each local government entity to annually establish its appropriations limit by resolution of its governing board," and that "Government Code section 12463 requires the annual appropriations limit to be reported in the financial transactions report submitted to the SCO." However, the SCO noted that it "has the responsibility to review each report for reasonableness, yet we are not required to audit any of the data reported." The SCO concluded, therefore, that "we are unable to determine which special district is subject to report an annual appropriations limit." The SCO did not comment on the draft proposed decision.

Department of Water Resources

DWR argues, in comments on the consolidated test claims, first, that the Water Conservation Act of 2009 applies to public and private entities alike, and is therefore not a "program" within the meaning of article XIII B, section 6. In addition, DWR argues that the Act is not a "new program," because it is "a refinement of urban and agricultural water conservation requirements that have been part of the law for years." DWR further asserts that even if the Act "were an unfunded state mandate, it would not be reimbursable since the water suppliers have sufficient non-tax sources to offset any implementation costs." And, DWR asserts that the test claim regulations on agricultural water measurement do not impose any requirements on water suppliers because "they are free to choose alternative measurement methods." And finally, DWR argues that the Act does not impose any new programs or higher levels of service "because what is required is compliance with general and evolving water conservation standards based on

[120] Exhibit C, Finance Comments, page 2.

[121] Exhibit C, Finance Comments, page 2 [emphasis in original].

[122] Exhibit C, Finance Comments, page 2.

[123] Exhibit J, SCO Comments, pages 1-2.

the foundational reasonable and beneficial water use principle dating from before the 1928 amendment – Article X, section 2 – to California's Constitution revising water use standards."[124]

In comments on the draft proposed decision, DWR "concurs with and fully supports the ultimate conclusion reached…", but reiterates and expands upon its earlier comments with respect to whether the alleged test claim requirements constitute a new program or higher level of service that is uniquely imposed upon local government.[125] DWR argues that "a law that governs private and public entities alike is not a 'program' for purposes of article XIII B…"[126] DWR continues:

> Claimants, in their Rebuttal Comments, ignore DWR's reference to the language of the Water Conservation Act, which by its plain terms is made applicable to both public and private entities. Instead, Claimants seek to shift attention away from the nature of the activity and focus instead on the number of entities engaged in that activity. Claimants concede that the law and regulations adopted pursuant to that law do in fact apply to both private and public entities, but argue that because (according to their calculation) "only 7.67%" of urban retail water suppliers are private, the requirements of the Water Conservation Act ought to be treated as reimbursable "programs" because those requirements "fall overwhelmingly on local governmental agencies."[127]

DWR maintains that "there are, in fact, 72 private wholesale and retail suppliers out of a total of 369…so the proportion of private water suppliers is actually 16.3 percent." And, "based on data submitted in the 2010 urban water management plans, it turns out that private retail water suppliers serve 19.7 percent of the population and account for 17.3 percent of water delivered."[128]

DWR acknowledges that there are more public than private water suppliers, but asserts that "[u]nder the Supreme Court's test in *County of Los Angeles v. State of California* the question is not whether an activity is more likely to be undertaken by a governmental entity, but whether the activity implements a state policy and imposes unique requirements on local governments, but is one that does not apply generally to all residents and entities in the state."[129] DWR explains that "generally," in this context, is not synonymous with "commonly," and therefore the prevalence of public water suppliers as to private is not relevant to the issue; rather, "generally" refers to

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[124] Exhibit D, DWR Comments, page 2.

[125] Exhibit U, DWR Comments on Draft Proposed Decision, page 1.

[126] Exhibit U, DWR Comments on Draft Proposed Decision, page 2 [citing Exhibit D, DWR Comments, filed June 7, 2013; *Carmel Valley Fire Protection District v. State* (1987) 190 Cal.App.3d 521, 537].

[127] Exhibit U, DWR Comments on Draft Proposed Decision, page 3 [quoting Exhibit E, Claimant's Rebuttal Comments, pages 3-4].

[128] Exhibit U, DWR Comments on Draft Proposed Decision, page 3.

[129] Exhibit U, DWR Comments on Draft Proposed Decision, page 3. See also, *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.

laws of general application, meaning "those that apply to all persons or entities of a particular class."[130] The Water Conservation Act, DWR maintains, "does just that."[131]

In addition, DWR disputes that the provision of water services is a "classic governmental function," as asserted by the claimants.[132] The California Supreme Court has held that reimbursement should be limited to new "programs" that carry out the governmental function of providing services to the public.[133] DWR maintains that there is an important distinction between public purposes, and private or corporate purposes, and that that distinction should control in the analysis of a new program or higher level of service. In particular, DWR identifies the provision of utilities to municipal customers as a corporate activity, rather than a governmental purpose:

> Of the myriad services provided by government, although some may be difficult to categorize, at either end of the spectrum the categories are fairly clear. At one end, such things as police and fire protection have long been recognized as true governmental functions, those that implicate the notion of the "government as sovereign." At the other end, however, are public utilities such as power generation, and, of particular significance to this claim, municipal water districts.[134]

DWR argues that "California law thus draws a distinction between the many utilitarian services that could as easily be (and often are) undertaken by the private sector, and those that implicate the unique authority vested in the state and its political subdivisions." DWR continues: "Maintaining a police force, for instance, is easily understood as something fundamental to the government *as government*." "On the other hand," DWR reasons, "there is nothing intrinsically governmental about a government entity operating a utility and providing services such as electricity, natural gas, sewer, garbage collection, or water delivery."[135]

DWR thus "urges the Commission to give full consideration to the fact that the Water Conservation Act is a law of general application that applies to private as well as public water

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[130] Exhibit U, DWR Comments on Draft Proposed Decision, page 3 [citing *McDonald v. Conniff* (1893) 99 Cal.386, 391.

[131] Exhibit U, DWR Comments on Draft Proposed Decision, page 3.

[132] Exhibit U, DWR Comments on Draft Proposed Decision, page 4 [citing Exhibit E, Claimant Rebuttal Comments, page 4].

[133] Exhibit U, DWR Comments on Draft Proposed Decision, page 4 [citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 50].

[134] Exhibit U, DWR Comments on Draft Proposed Decision, page 5 [citing *Chappelle v. City of Concord* (1956) 144 Cal.App.2d 822, 825; *County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481; *Davoust v. City of Alameda* (1906) 149 Cal. 69, 72; *City of South Pasadena v. Pasadena Land & Water Co.* (1908) 152 Cal. 579, 593; *Nourse v. City of Los Angeles* (1914) 25 Cal.App. 384, 385; *Mann Water & Power Co. v. Town of Sausalito* (1920) 49 Cal.App. 78, 79; *In re Bonds of Orosi Public Utility Dist.* (1925) 196 Cal. 43, 58; *Glenbrook Development Co. v. City of Brea* (1967) 253 Cal.App.2d 267, 274].

[135] Exhibit U, DWR Comments on Draft Proposed Decision, page 6.

suppliers alike." And, DWR reiterates: "contrary to Claimants' suggestion, water delivery, while clearly an important service, is not a classic "governmental function" in the constitutional sense."[136]

C. Interested Person Positions:[137]

California Special Districts Association

CSDA asserts that "the Proposed Decision fails to appropriately analyze the provisions of Article XIII B Section 6…as amended by Proposition 1A in 2004…"[138] CSDA argues that the draft proposed decision "rather analyzes the original language of Article XIII B Section 6 adopted as Proposition 4 in 1978, before the adoption of Proposition 218 adding articles XIII C and XIII D to the Constitution and before the adoption of Proposition 1A amending Article XIII B Section 6."[139]

CSDA argues that the plain language of article XIII B, section 6, as amended by Proposition 1A, "indicates that the mandate provisions are applicable to all cities, counties, cities and counties, and special districts without restriction."[140] CSDA further asserts that "[t]he plain language also mandates the state to appropriate the 'full payment amount' of costs incurred by local government in complying with state mandated programs, without any qualification as to the types of revenues utilized by local governments in paying the costs of such compliance."[141] CSDA reasons that "there are no words of limitation indicating that suspension of mandates is only applicable to those local government agencies which receive proceeds of taxes and expend those proceeds of taxes in complying with state mandated programs." Therefore, absent "such limiting language, the holding of the Proposed Decision which limits eligibility for claiming reimbursement…to those local agencies receiving proceeds of taxes is contradicted by the mandate provisions of Proposition 1A, and is therefore incorrect as a matter of law."[142]

CSDA also argues that the voters' intent and understanding in adopting Proposition 1A is controlling, and can be determined by examining the LAO analysis in the ballot pamphlet.[143] CSDA argues that "[t]he LAO analysis of Proposition 1A in the ballot pamphlet fails to mention any restriction or limitation on state mandates to be reimbursed or suspended, and such analysis is totally silent as to any requirement that reimbursable mandates be limited to those mandates imposed on local governments which receive and expend proceeds of taxes…" In fact, CSDA argues, the LAO analysis indicates that Proposition 1A "expand(s) the circumstances under

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[136] Exhibit U, DWR Comments on Draft Proposed Decision, page 7.

[137] "Interested person" is defined in the Commission's regulations to mean "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, having an interest in the activities of the Commission." (Cal. Code Regs., tit. 2, § 1181.2(j).)

[138] Exhibit S, CSDA Comments on Draft Proposed Decision, page 6.

[139] Exhibit S, CSDA Comments on Draft Proposed Decision, page 6.

[140] Exhibit S, CSDA Comments on Draft Proposed Decision, page 8.

[141] Exhibit S, CSDA Comments on Draft Proposed Decision, page 8.

[142] Exhibit S, CSDA Comments on Draft Proposed Decision, page 8.

[143] Exhibit S, CSDA Comments on Draft Proposed Decision, page 8.

which the state is responsible for reimbursing cities, counties and special districts for complying with state mandated programs by including all programs for which the state even had partial financial responsibility before such transfer."[144] CSDA maintains that "[t]herefore the voters who approved Proposition 1A by 82% of the popular vote had no understanding of this limitation on reimbursement of state mandates to local governments which is the basic holding of the Proposed Decision."[145] CSDA relies on the language of the ballot pamphlet, which states: "if the state does not fund a mandate within any year, the state must eliminate local government's duty to implement it for that same time period."[146] CSDA concludes that "[t]he plain words of Proposition 1A support this voter intent to require the state to fully reimburse the costs incurred by all cities, counties, cities and counties and special districts in implementing any state program in which the complete or partial financial responsibility for that program has been transferred from the state to local government, not just those cities, counties, cities and counties, and special districts which receive proceeds of taxes."[147]

In addition, CSDA argues that the Commission's analysis must read together and harmonize articles XIII A, XIII B, XIII C, and XIII D.[148] Specifically, CSDA argues that pursuant to article XIII C, added by Proposition 218, property-related fees are subject to "majority protest procedures" and "may not be expended for general governmental services…which are available to the public at large in substantially the same manner as they are to property owners..." [149] And, revenues from property-related fees "may not be used for any purpose other than that for which the fee was imposed;" and "may not exceed the costs required to provide the property related service."[150] In addition, CSDA asserts that the amount of a property-related fee must not exceed the proportional cost of providing the service to each individual parcel subject to the fee.[151] CSDA also notes that "Article XIII D includes similar provisions restricting the ability of local governments to raise and expend assessment revenue."[152] CSDA argues that "[a]nalyzed together, all of these restrictions on the raising and expenditure of property related fees and charges by local government agencies specified in Articles XIII C and D of the Constitution severely limit the ability of local government agencies to utilize revenue for property related fees and charges to fund the costs of state mandated programs."[153] CSDA goes on to argue that "[t]hose restrictions are more onerous and stringent than the restrictions imposed on local government agencies in expending proceeds of taxes by virtue of the appropriations limit in

[144] Exhibit S, CSDA Comments on Draft Proposed Decision, page 9.

[145] Exhibit S, CSDA Comments on Draft Proposed Decision, page 9.

[146] Exhibit S, CSDA Comments on Draft Proposed Decision, page 10.

[147] Exhibit S, CSDA Comments on Draft Proposed Decision, page 10.

[148] Exhibit S, CSDA Comments on Draft Proposed Decision, page 10.

[149] Exhibit S, CSDA Comments on Draft Proposed Decision, page 11.

[150] Exhibit S, CSDA Comments on Draft Proposed Decision, page 11.

[151] Exhibit S, CSDA Comments on Draft Proposed Decision, page 11.

[152] Exhibit S, CSDA Comments on Draft Proposed Decision, page 12.

[153] Exhibit S, CSDA Comments on Draft Proposed Decision, page 12.

Article XIII B."[154] CSDA concludes that "[t]he Proposed Decision should be modified to recognize these restrictions imposed by Articles XIII C and D."[155]

Environmental Law Foundation Position

ELF states, in its comments, that it agrees with the draft proposed decision, however, "[t]o aid the Commission in developing its final decision, we would like to present an additional ground upon which the Commission could rely in denying the test claim…"[156] ELF asserts that "the Commission should find that charges for irrigation water are not 'property-related fees' for the purposes of Article XIII D of the California Constitution."[157] Specifically, ELF agrees that the test claim statutes are exempt from the voter-approval requirements of article XIII D, section 6(c);[158] however, ELF also argues that "charges for irrigation water are not 'property-related fees' at all." ELF reasons: "As a result, raising them does not trigger the substantive or procedural requirements contained in Article XIII D, and the claimant districts may increase them free of any constitutional obstacle."[159]

ELF continues: "Article XIII D, § 3 restricts local governments' ability to levy a new "assessment, fee, or charge" without complying with the substantive and procedural requirements of section 4 (assessments) and section 6 (property-related fees)." However, ELF asserts that "Section 2 of Article XIII D makes Proposition 218's relatively limited reach abundantly clear."[160] ELF notes that section 2 defines a fee or charge as "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service."[161] ELF therefore reasons that "[f]ees that are not 'imposed upon a parcel' or that are not imposed upon a 'person as an incident of property ownership' or that are not a 'user fee or charge for a property related service' are not subject to Article XIII D."[162] ELF notes that in *Apartment Association of Los Angeles County v. City of Los Angeles*[163] the court held that an inspection fee imposed upon landlords was not imposed upon them as property owners, but as business owners and, therefore the fee was not subject to article XIII D.[164] The court, ELF

[154] Exhibit S, CSDA Comments on Draft Proposed Decision, page 12.

[155] Exhibit S, CSDA Comments on Draft Proposed Decision, page 12.

[156] Exhibit T, ELF Comments on Draft Proposed Decision, page 1.

[157] Exhibit T, ELF Comments on Draft Proposed Decision, page 1.

[158] Exhibit T, ELF Comments on Draft Proposed Decision, page 3 [citing Exhibit Q, Draft Proposed Decision, page 80].

[159] Exhibit T, ELF Comments on Draft Proposed Decision, page 3.

[160] Exhibit T, ELF Comments on Draft Proposed Decision, page 3.

[161] California Constitution, article XIII D, section 2; Exhibit T, ELF Comments on Draft Proposed Decision, page 3.

[162] Exhibit T, ELF Comments on Draft Proposed Decision, pages 3-4.

[163] (2001) 24 Cal.4th 830.

[164] Exhibit T, ELF Comments on Draft Proposed Decision, page 4.

explains, found that this type of fee was "not 'property related' because it was dependent on the property's use – it was not imposed on the property simply as an incident of ownership."[165]

ELF goes on to note that "no case has squarely addressed the issue…" but the courts have recognized that not all water service charges are necessarily subject to article XIII D. In *Pajaro Valley Water Management Agency v. Amrheim*,[166] the court held that a groundwater augmentation charge was a property-related fee, but "it rested that conclusion on the fact that the majority of users were residential users, not large-scale irrigators."[167] And, ELF notes, other cases have found that domestic water use is "necessary for 'normal ownership and use of property.'"[168] ELF concludes that these cases, and others, "present no obstacle to the conclusion that irrigation water is not a property-related service."[169] ELF concludes that fees for irrigation water are not "property-related" but a business-related fee, and that therefore the Commission should deny this test claim.[170]

Northern California Water Association Position

In late comments on the draft proposed decision, NCWA seeks to "highlight and emphasize how onerous and expensive these new state mandates are in the Sacramento Valley."[171] NCWA argues that "[t]hese statewide benefits, achieved through implementation of incredibly expensive mandates, ought to be funded by the state and not borne exclusively by the impacted local agencies' landowners."[172] NCWA continues: "The draft proposed decision, in an effort to circumvent the clear requirements to reimburse for these types of state mandates, has attempted to avoid reimbursement by exerting exclusions that are not appropriate for the facts before the Commission."[173] NCWA denies that any "exemptions" apply to the test claim statutes, and "urge[s] the Commission to modify the draft proposed decision to reimburse these and other similarly affected water suppliers."[174]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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[165] Exhibit T, ELF Comments on Draft Proposed Decision, page 4.

[166] (2007) 150 Cal.App.4th 1364.

[167] Exhibit T, ELF Comments on Draft Proposed Decision, pages 4-5.

[168] Exhibit T, ELF Comments on Draft Proposed Decision, page 5 [citing *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409, 427; *Bighorn Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205].

[169] Exhibit T, ELF Comments on Draft Proposed Decision, page 5.

[170] Exhibit T, ELF Comments on Draft Proposed Decision, page 5.

[171] Exhibit V, NCWA Comments on Draft Proposed Decision, page 1.

[172] Exhibit V, NCWA Comments on Draft Proposed Decision, page 2.

[173] Exhibit V, NCWA Comments on Draft Proposed Decision, page 2.

[174] Exhibit V, NCWA Comments on Draft Proposed Decision, page 2.

> 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 programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of article XIII B, section 6 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."[175] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[176]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[177]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[178]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[179]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not

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

[176] *County of Los Angeles v. State of California* (*County of Los Angeles I*) (1987) 43 Cal.3d 46, 56.

[177] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, 874.

[178] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56).

[179] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

reimbursable if an exception identified in Government Code section 17556 applies to the activity.[180]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[181] 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.[182] 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."[183]

The parties raise the following issues in their comments:

- The test claim statute and executive order do not impose a new program or higher level of service that is subject to article XIII B, section 6 because the Water Conservation Law and implementing regulations apply to both public and private water suppliers alike, and do not impose requirements uniquely upon local government.
- The test claim statute and executive order do not impose a new program or higher level of service because the provision of water and other utilities is an activity that could be, and often is, undertaken by private enterprise, and is therefore not a quintessentially governmental service in the manner that police and fire protection are generally accepted to be.
- The test claim does not result in costs mandated by the state for agricultural water suppliers because fees or charges for the provision of irrigation water are not "property-related" fees or charges subject to the limitations of articles XIII C and XIII D.

As described below, the Commission denies this claim on the grounds that most of the code sections and regulations pled do not impose new mandated activities, and all affected claimants have sufficient fee authority as a matter of law to cover the costs of any new requirements. Therefore, this decision does not make findings on the additional potential grounds for denial raised in comments on the draft proposed decision summarized above.

A. South Feather Water and Power Agency, Paradise Irrigation District, Oakdale Irrigation District, and Glenn-Colusa Irrigation District are Subject to the Revenue Limitations of Article XIII B, and are Therefore Eligible for Reimbursement Pursuant to Article XIII B, Section 6.

1. To be eligible for reimbursement, a local agency must be subject to the taxing and spending limitations of articles XIII A and XIII B.

[180] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[181] *County of San Diego, supra*, 15 Cal.4th 68, 109.

[182] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332.

[183] *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose, supra*].

An interpretation of article XIII B, section 6 requires an understanding of articles XIII A and XIII B. "Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[184]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property," and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[185] In addition to limiting the property tax, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[186]

Article XIII B was adopted by the voters as Proposition 4 less than 18 months after the addition of article XIII A to the state Constitution, and was billed as "the next logical step to Proposition 13."[187] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[188]

Article XIII B established an "appropriations limit," or spending limit for each "entity of local government" beginning in fiscal year 1980-1981.[189] Specifically, the appropriations limit provides as follows:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.[190]

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[191] Article XIII B does not limit the ability to expend government funds collected from *all sources*; the appropriations limit is based on "appropriations subject to limitation," which means, pursuant to article XIII B, section 8, "any authorization to

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[184] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 (*County of Fresno*).

[185] California Constitution, article XIII A, section 1 (effective June 7, 1978).

[186] California Constitution, article XIII A, section 4 (effective June 7, 1978).

[187] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 (*County of Placer*).

[188] *Ibid*.

[189] California Constitution, article XIII B, section 8(h) (added, Nov. 7, 1979).

[190] California Constitution, article XIII B, section 1 (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[191] California Constitution, article XIII B, section 2 (added, Nov. 7, 1979).

expend during a fiscal year the *proceeds of taxes* levied by or for that entity."[192] Appropriations subject to limitation do not include "local agency loan funds or indebtedness funds"; "investment (or authorizations to invest) funds…of an entity of local government in accounts at banks…or in liquid securities";[193] "[a]ppropriations for debt service"; "[a]ppropriations required to comply with mandates of the courts or the federal government"; and "[a]ppropriations 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 [and one half] 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."[194]

Proposition 4 also added article XIII B, section 6 to require the state to reimburse local governments for any additional expenditures that might be mandated by the state, and which would rely solely on revenues subject to the appropriations limit. The California Supreme Court, in *County of Fresno v. State of California*,[195] explained:

> 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. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) 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. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) 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 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*.[196]

Not every local agency is subject to the restrictions of article XIII B, and therefore not every local agency is entitled to reimbursement. Redevelopment agencies, for example, have been identified by the courts as being exempt from the restrictions of article XIII B. In *Bell Community Redevelopment Agency v. Woolsey*, the Second District Court of Appeal concluded that a redevelopment agency's power to issue bonds, and to repay those bonds with its tax increment, was not subject to the spending limit of article XIII B. The court reasoned that to construe tax increment payments as appropriations subject to limitation "would be directly contrary to the mandate of section 7," which provides that "[n]othing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with

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[192] California Constitution, article XIII B, section 8 (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990) [emphasis added].

[193] California Constitution, article XIII B, section 8.

[194] California Constitution, article XIII B, section 9 (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[195] *County of Fresno, supra*, (1991) 53 Cal.3d 482.

[196] *Id*, at p. 487. Emphasis in original.

respect to existing or future bonded indebtedness."[197] In addition, the court found that article XVI, section 16, addressing the funding of redevelopment agencies, was inconsistent with the limitations of article XIII B:

> Article XVI, section 16, provides that tax increment revenues "may be irrevocably pledged" to the payment of tax allocation bonds. If bonds must annually compete for payment within an annual appropriations limit, and their payment depend upon complying with the such limit [*sic*], it is clear that tax allocation proceeds cannot be irrevocably pledged to the payment of the bonds. Annual bond payments would be contingent upon factors extraneous to the pledge. That is, bond payments would be revocable every year of their life to the extent that they conflicted with an annual appropriation limit. The untoward effect would be that bonds would become unsaleable because a purchaser could not depend upon the agency having a sure source of payment for such bonds.[198]

The court therefore concluded that redevelopment agencies could not reasonably be subject to article XIII B, and therefore upheld Health and Safety Code section 33678, and ordered that the writ issue to compel Woolsey to publish the notice.

Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,[199] the court held that redevelopment agencies were not eligible to claim reimbursement because Health and Safety Code section 33678 exempted tax increment financing, their primary source of revenue, from the limitations of article 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, 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...
>
> For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6… [The] costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues.[200]

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[197] (1985) 169 Cal.App.3d 24, at p. 31 [quoting article XIII B, section 7].

[198] *Id*, at p. 31.

[199] (1997) 55 Cal.App.4th 976.

[200] *Redevelopment Agency of San Marcos*, *supra*, 55 Cal.App.4th at pp. 986-987 [internal citations omitted].

In 2000, the Third District Court of Appeal, in *City of El Monte v. Commission on State Mandates*, affirmed the reasoning of the *San Marcos* decision, holding that a redevelopment 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.[201]

Therefore, pursuant to the plain language of article XIII B, section 9 and the decisions in *County of Fresno*, *supra*, *Redevelopment Agency of San Marcos*, *supra*, and *City of El Monte*, *supra*, a local agency that does not collect and expend "proceeds of taxes" is not subject to the tax and spend limitations of articles XIII A and B, and therefore is not entitled to claim reimbursement pursuant to article XIII B, section 6.

Nevertheless, claimants argue that *County of Fresno* and the redevelopment agency cases do not apply in this case. Specifically, claimants argue that *County of Fresno*, *supra*, predates Proposition 218, which added articles XIII C and XIII D to the California Constitution, and is factually distinguishable from this test claim because the test claim statute at issue in *County of Fresno* specifically authorized user fees to pay for the mandated activities. With respect to the redevelopment cases (*Bell Community Redevelopment Agency*, *Redevelopment Agency of San Marcos*, and *City of El Monte*), the claimants argue that the courts' findings rely on Health and Safety Code section 33678, which specifically excepts the revenues of redevelopment agencies from the scope of revenue-limited appropriations under article XIII B.[202] In addition, the claimants argue that the above reasoning "would prohibit state subvention for every enterprise district in the state that is subject to Proposition 218…" and "would create a class of local agencies that are per se ineligible for reimbursement under this test claim, all potential future test claims, and all previous test claims dating back to Proposition 218's passage in 1996."[203] In addition, both the claimants and CSDA suggest that the Commission broaden the scope of reimbursement eligibility under article XIII B, section 6, beyond that articulated by the courts, and beyond the plain language of articles XIII A and XIII B.[204] The claimants and CSDA urge the Commission to consider the restrictions placed on special districts' authority to impose assessments, fees, or charges by articles XIII C and XIII D to be part of the "increasingly limited revenues sources" that subvention under section 6 was intended to protect. The claimants and CSDA would have the Commission broadly interpret and extend the subvention requirement and treat fee authority subject to proposition 218 as proceeds of taxes, "to advance the goal of 'preclud[ing] the state from shifting financial responsibility for carrying out governmental functions onto local entities that [are] ill equipped to handle the task."[205]

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[201] (2000) 83 Cal.App.4th 266, 281-282 (*El Monte*).

[202] Exhibit R, Claimant Comments on Draft Proposed Decision, pages 17-18.

[203] Exhibit R, Claimant Comments on Draft Proposed Decision, pages 14-15.

[204] See Exhibit R, Claimant Comments on Draft Proposed Decision, page 21; Exhibit S, CSDA Comments on Draft Proposed Decision, pages 10-12 [Arguing that the restrictions of articles XIII C and XIII D are more onerous than the revenue limits of article XIII B, and the Commission should "recognize these restrictions…" and "Articles XIII A, B, C, and D should be read together and harmonized…"].

[205] Exhibit R, Claimant Comments on Draft Proposed Decision, page 21 [quoting *County of Fresno*, *supra* 53 Cal.3d, at p. 487.].

The claimant's comments do not alter the above analysis. The factual distinction that claimants allege between this test claim and *County of Fresno* is not dispositive.[206] Specific fee authority provided by the test claim statute is not necessary: so long as a local government's statutory fee authority can be legally applied to alleged activities mandated by the test claim statute, there are no *costs mandated by the state* within the meaning of Government Code section 17514 and article XIII B, section 6, to the extent of that fee authority.[207] If the local entity is not compelled to rely on *appropriations subject to limitation* to comply with the alleged mandate, no reimbursement is required.[208]

The claimant's comments addressing the redevelopment cases are similarly unpersuasive. Those cases are discussed above not as analogues for the types of special districts represented in this test claim, but only to demonstrate that *not all local government entities* are subject to articles XIII A and XIII B, and that an agency that is not bound by article XIII B cannot assert an entitlement to reimbursement under section 6.[209]

Moreover, enterprise districts, and indeed any local government entity funded exclusively through user fees, charges, or assessments, *are* per se ineligible for mandate reimbursement. This is so because only a mandate to expend revenues that are subject to the appropriations limit, as defined and expounded upon by the courts,[210] can entitle a local government entity to mandate reimbursement. In other words, a local agency that is funded solely by user fees or charges, (or tax increment revenues, as discussed above), or appropriations for debt service, or any combination of revenues "other than the proceeds of taxes" is an agency that is not subject to the appropriations limit, and therefore not entitled to subvention.[211]

This interpretation is supported by decades of mandates precedent and is consistent with the purpose of article XIII B. As discussed above, "Section 6 was included in article XIII B in recognition that article XIII A…severely restricted the *taxing* powers of local governments."[212] Article XIII B "was not intended to reach beyond taxation…" and "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue…"[213] The issue, then, is

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[206] Exhibit R, Claimant Comments on Draft Proposed Decision, pages 17-18. *County of Fresno*, *supra*, 53 Cal.3d at p. 485.

[207] See also, *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 812 ["Claimants can choose not to required these fees, but not at the state's expense."

[208] See *Redevelopment Agency of San Marcos*, *supra*, 55 Cal.App.4th at p. 987 ["No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes."].

[209] *City of El Monte*, *supra*, (2000) 83 Cal.App.4th 266, 281-282 [citing *Redevelopment Agency of San Marcos*, *supra*, (1997) 55 Cal.App.4th 976].

[210] See *Placer v. Corin* (1980) 113 Cal.App.3d 443; *Bell Community Redevelopment Agency*, *supra* (1985) 169 Cal.App.3d 24; *County of Fresno*, *supra* (1991) 53 Cal.3d 482; *Redevelopment Agency of San Marcos*, *supra*, (1997) 55 Cal.App.4th 976.

[211] California Constitution, article XIII B, section 9 (Adopted Nov. 6, 1979; Amended June 5, 1990).

[212] See *County of Fresno*, *supra*, 53 Cal.3d at p. 487 [emphasis added].

[213] *Ibid*.

not *how many* different sources of revenue a local entity has at its disposal, as suggested by claimants;[214] it is whether and to what extent those sources of revenue (and the appropriations to be made) are *limited* by articles XIII A and XIII B. Based on the foregoing, nothing in claimants' comments alters the above analysis.

The Commission also disagrees with the interpretation offered by CSDA. CSDA argues in its comments that Proposition 1A, adopted in 2004, made changes to article XIII B, section 6, which must be considered by the Commission, and that the voters' intent and understanding when adopting Proposition 1A should weigh heavily on the Commission's interpretation of the amended text.[215] However, the amendments made by Proposition 1A require the Legislature to either pay or suspend a mandate for local agencies, and expand the definition of a new program or higher level of service. The plain language of Proposition 1A does not address which entities are eligible to claim reimbursement, and does not require reimbursement for all special districts, including those that do not receive property tax revenue and are not subject to the appropriations limitation of article XIII B.[216] CSDA's comments do not alter the above analysis.

Based on the foregoing, a local agency that does not collect and expend "proceeds of taxes" is not subject to the tax and spend limitations of articles XIII A and B, and therefore is not entitled to claim reimbursement pursuant to article XIII B, section 6.

2. Biggs-West Gridley Water District and Richvale Irrigation District are not subject to the taxing and spending limitations of articles XIII A and XIII B, and are therefore not eligible for reimbursement under article XIII B, section 6 of the California Constitution. However, Oakdale Irrigation District and Glenn-Colusa Irrigation District are subject to the taxing and spending limitations, have been substituted in as claimants for both of the consolidated test claims, and are eligible for reimbursement under article XIII B, section 6 of the California Constitution.

10-TC-12 was originally filed by four co-claimants: South Feather, Paradise, Biggs, and Richvale.[217] 12-TC-01 was filed by Richvale and Biggs only,[218] and the two test claims were consolidated for analysis and hearing and renamed *Water Conservation*. Based on the analysis herein, the Commission finds that Richvale and Biggs are ineligible to claim reimbursement under article XIII B, section 6, and test claim 12-TC-01 would have to be dismissed for want of an eligible claimant.[219] However, Oakdale and Glenn-Colusa have requested to be substituted in on both test claims in the place of the ineligible claimants.[220] The analysis below will therefore address the eligibility of each of the six co-claimants, and will show that South Feather, Paradise,

[214] Exhibit R, Claimant Comments on Draft Proposed Decision, pages 20-21.

[215] See, e.g., Exhibit S, CSDA Comments on Draft Proposed Decision, page 7.

[216] See California Constitution, article XIII B, section 6 (b-c).

[217] Exhibit A, Test Claim 10-TC-12.

[218] Exhibit B, Test Claim 12-TC-01.

[219] See Exhibit K, Notice of Pending Dismissal.

[220] Exhibit N, Request for Substitution of Parties by Oakdale Irrigation District; Exhibit O, Request for Substitution of Parties by Glenn-Colusa Irrigation District.

Oakdale, and Glenn-Colusa are all eligible to claim reimbursement under article XIII B, section 6, and therefore the Commission maintains jurisdiction over both of the consolidated test claims.

a. Biggs-West Gridley Water District and Richvale Irrigation District are not eligible to claim reimbursement under article XIII B, section 6.

The Districts have acknowledged that "Richvale and Biggs do not receive property tax revenue."[221] With respect to Richvale, that statement is consistent with the original test claim filing, in which Richvale stated that it "does not receive an annual share of property tax revenue."[222] However, Biggs had earlier stated in a declaration by Karen Peters, the District's Executive Administrator, that "Biggs receives an annual share of property tax revenue," and for "Fiscal Year 2011 the amount of property tax revenue is expected to be approximately $64,000."[223] Biggs has since determined that the Peters declaration was in error, and a more recent declaration from Eugene Massa, the District's General Manager, states that "[t]hat revenue estimate actually reflects Biggs' *assessment*, equating to $2 per acre within Biggs' boundaries." Mr. Massa goes on to state that "Biggs does not currently receive any share of ad valorem *property tax* revenue."[224,225]

Even though Richvale and Biggs acknowledge that they receive no property tax revenue, they argue that they and "other similarly situated public agencies should not be deemed ineligible for subvention due to a historical quirk that resulted in those agencies not receiving a share of ad valorem property taxes."[226] The "historical quirk" to which Richvale and Biggs refer, it is assumed, is the fact that Richvale and Biggs either did not exist or did not share in ad valorem property tax revenue as of the 1977-78 fiscal year, which would render at least some portion of

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[221] Exhibit I, Claimant Response to Request for Additional Information, page 1.

[222] Exhibit A, South Feather Water and Power Test Claim, page 22.

[223] Exhibit A, 10-TC-12, page 30.

[224] Exhibit I, Claimant Response to Request for Additional Information, page 393 [emphasis added].

[225] See also Exhibit X, Special Districts Annual Report 2010-2011, pages 184; 389; 1051 [The Special Districts Annual Report for 2010-2011 is consistent with Richvale's statement that it does not receive property tax revenue. Table 8 indicates no property tax receipts, and Table 1 does not indicate an appropriations limit. Biggs did not submit the necessary information to the SCO, and therefore does not appear in Tables 1 or 8 of the 2010-2011 Special Districts Annual Report. Based on that report, and the admissions of the Districts, a notice of dismissal was issued on November 12, 2013 for test claim 12-TC-01, for which Richvale and Biggs were the only named claimants. In response to the Notice of Pending Dismissal, the Districts submitted an Appeal of Dismissal, in which they argue that Proposition 218 undermines a local agency's fee authority, and that the Districts are eligible for reimbursement "for the reasons already explained in the Districts' 'Claimants' Response to Request for Additional Information 10-TC-12 and 12-TC-01.'" (Exhibit K, Notice of Pending Dismissal; Exhibit L, Appeal of Executive Director's Decision)].

[226] Exhibit R, Claimant Comments on Draft Proposed Decision, page 20.

their revenues subject to the appropriations limit, in accordance with article XIII B, section 9.[227] They argue that all public agencies are ill-equipped to cover the costs of new mandates, whether they are subject to the tax and spend limits of articles XIII A and XIII B, or the fee and assessment restrictions of articles XIII C and XIII D.[228] In addition, Richvale and Biggs assert that to the extent they do have authority to raise revenues other than taxes, any increased fees or assessments necessary to cover the costs of the required activities would, by definition, be classified as proceeds of taxes under article XIII B, section 8.[229]

The Districts' reasoning is both circular and fundamentally unsound. Article XIII B, section 8 provides that "proceeds of taxes" includes "all tax revenues and the proceeds to an entity of government from (1) regulatory licenses, user charges, and user fees *to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service*, and (2) the investment of tax revenues."[230] The districts argue, therefore, that "proceeds of taxes" includes not only revenues directly derived from taxes, "but also revenues exceeding the costs to fund the services provided by the agency." The Districts argue that Richvale and Biggs are unable, under Proposition 218, to impose new fees as a matter of law, and must reallocate existing fees, which constitute "proceeds of taxes" under article XIII B, section 8. But Proposition 218 added article XIII D to expressly provide that fees or charges "*shall not be extended, imposed, or increased*" if revenues derived from the fee or charge exceed the funds needed to provide the property-related service; and "shall not be used for any purpose other than that for which the fee or charge was imposed."[231] Therefore, Proposition 218 imposes an absolute bar to raising fees beyond those necessary to provide the property-related service, or "reallocating" fees for a purpose other than that for which the fee or charge was imposed.

Moreover, Richvale and Biggs' reasoning that such fees *would automatically and by definition* constitute proceeds of taxes under article XIII B, section 8, rests on the initial presumption that such fees or charges would "exceed" those necessary to provide the service. In other words, the Districts presume that the costs of the mandate are unrelated to, or exceed, the costs of providing water service to the districts' users.[232] On the contrary, any fees or charges, whether *new or existing*, imposed by Richvale and Biggs are imposed for the purpose of providing irrigation water. The alleged mandated activities imposed upon irrigation districts by the test claim statute and regulations are required for those districts to *continue* providing irrigation water. Therefore, utilizing revenues from fees or charges to comply with the alleged new requirements is not

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[227] Section 9 states that appropriations subject to limitation do not include: "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 1/2 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."

[228] Exhibit R, Claimant Comments on Draft Proposed Decision, page 20.

[229] Exhibit I, Claimant Response to Request for Additional Information, page 3.

[230] Exhibit I, Claimant Response to Request for Additional Information, page 3 [citing California Constitution, article XIII B, section 8 (emphasis added)].

[231] Article XIII D, section 6(b) (added November 5, 1996, by Proposition 218).

[232] Exhibit I, Claimant Response to Request for Additional Information, pages 4-5.

"divert[ing] existing revenues from their authorized purposes…"[233] Rather, the increased or reallocated fees are merely being used to ensure that claimants can continue to provide water service consistently with all applicable legal requirements. Claimants' assertion that an increase or reallocation of fees alters the legal significance of such fees pursuant to article XIII B, section 8 is not supported by the law or the record.

Simply put, Richvale and Biggs do not impose or collect taxes[234] and the Commission cannot say, as a matter of law, that fees increased or imposed to comply with the alleged mandate would constitute proceeds of taxes, within the meaning of article XIII B, section 8. Unless or until a court determines that article XIII B, section 8 can be applied in this manner, the Commission must presume that only those local government entities that collect and expend proceeds of taxes, within the meaning of article XIII A, are subject to the spending limits of article XIII B, including section 6.

Based on the foregoing, the Commission finds that 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.

b. South Feather Water and Power Agency and Paradise Irrigation District are eligible to claim reimbursement under article XIII B, section 6.

Claimants state that "South Feather and Paradise receive property tax revenue," and "are in the process of establishing their appropriations limits for their current fiscal years."[235]

Declarations attached to claimants' response state that both South Feather and Paradise are in the process of determining and adopting an appropriations limit. Kevin Phillips, Finance Manager of Paradise, stated that during his tenure, "I have not calculated or otherwise established Paradise's appropriation limit as set forth in Proposition 4." Mr. Phillips further states that "[a]t the request of Paradise's legal counsel, I have begun working to establish Paradise's appropriation limit and intend…to ask Paradise's Board of Directors to adopt a resolution…for its current fiscal year."[236] Similarly, Steve Wong, Finance Division Manager of South Feather, states that he has not "calculated or otherwise established South Feather's appropriation limit" during his employment with South Feather. Mr. Wong further states that "[a]t the request of South Feather's legal counsel, I have begun working to establish South Feather's appropriation limit and intend, after the requisite public review period, to ask South Feather's Board of Directors to adopt a resolution establishing South Feather's appropriation limit for its current fiscal year."[237]

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[233] See Exhibit I, Claimant Response to Request for Additional Information, pages 4-5.

[234] Note that special districts generally have statutory authorization to impose special taxes, but only with two-thirds voter approval (See article XIII A, section 4). However, there is no evidence in the record indicating that Richvale or Biggs currently collects or expends special taxes.

[235] Exhibit I, Claimant Response to Request for Additional Information, pages 1-2.

[236] See Exhibit I, Claimant Response to Request for Additional Information, page 394.

[237] See Exhibit I, Claimant Response to Request for Additional Information, page 427.

Based on the foregoing, the Commission finds that both South Feather and Paradise are subject to the tax and spend limitations of articles XIII A and XIII B, and are therefore eligible to claim reimbursement under article XIII B, section 6.

3. Oakdale Irrigation District and Glenn-Colusa Irrigation District are eligible to claim reimbursement under article XIII B, section 6 and are thus substituted in as claimants in the consolidated test claims in place of Biggs-West Gridley Water District and Richvale Irrigation District.

Pursuant to the Notice of Pending Dismissal, Oakdale submitted a request to be substituted in as a party on 10-TC-12 and 12-TC-01 on January 13, 2014. Oakdale states that it is subject to the tax and spend limitations of articles XIII A and XIII B, and that it is an agricultural water supplier "subject to the mandates imposed by the Agricultural Water Measurement Regulations…and the Water Conservation Act of 2009."[238] The declaration of Steve Knell, Oakdale's General Manager, attached to the Request for Substitution, states that Oakdale "receives an annual share of ad valorem property tax revenue from Stanislaus and San Joaquin counties." The declaration further states that the District "received $5,701,730 in property taxes for 2011-2013 and expects to receive approximately $1.9 million in 2014."

The Special Districts Annual Reports for 2010-2011 and 2011-2012 do not indicate an appropriations limit for Oakdale in Table 1,[239] but they do indicate that Oakdale received property tax revenue in Table 8 for 2010-2011 and 2011-2012.[240]

Similarly, Glenn-Colusa submitted a request to be substituted in as a party on both test claims. Glenn-Colusa asserted in its request that it "is subject to the tax and spend limitations of Articles XIII A and XIII B of the California Constitution," and is an agricultural water supplier, subject to "the mandates imposed by the Water Conservation Act of 2009…and the Agricultural Water Measurement Regulations."[241] In declarations attached to the Request for Substitution, Thaddeus Bettner, General Manager of Glenn-Colusa, asserts that the District "received $520,420 in property taxes in 2013 and expects to receive $528,300 in 2014."[242]

Table 8 of the Special Districts Annual Report indicates that Glenn-Colusa collected property taxes in 2010-2011 and 2011-2012,[243] but Table 1 does not indicate an appropriations limit for the district.[244]

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[238] Exhibit N, Request for Substitution of Parties by Oakdale Irrigation District, page 2.

[239] Exhibit X, Special Districts Annual Reports for 2010-2011 and 2011-2012, pages 159 and 157, respectively.

[240] Exhibit X, Special Districts Annual Reports for 2010-2011 and 2011-2012, pages 381 and 379, respectively.

[241] Exhibit O, Request for Substitution of Parties by Glenn-Colusa Irrigation District, pages 1-2.

[242] Exhibit O, Request for Substitution of Parties by Glenn-Colusa Irrigation District, page 7.

[243] Exhibit X, Special Districts Annual Report, 2010-2011 and 2011-2012, pages 357 and 355, respectively.

[244] Exhibit X, Special Districts Annual Report, 2010-2011 and 2011-2012, pages 104 and 101, respectively.

Based on the evidence in the record, including the declarations of the General Managers of Oakdale and Glenn-Colusa, as well as the information reported to the SCO in the Special Districts Annual Reports for fiscal years 2010-2011 and 2011-2012, both the substitute claimants collect some amount of property tax revenue. In turn, because property tax revenue is subject to the appropriations limit, both claimants also expend revenues subject to the appropriations limit, in accordance with article XIII B. A local government entity that is subject to both articles XIII A and XIII B is eligible for subvention under article XIII B, section 6, and is an eligible claimant before the Commission.

The Commission concludes that both Oakdale and Glenn-Colusa are subject to article XIII B as a matter of law, because they have authority to collect and expend property tax revenue.

Based on the foregoing, the Commission finds that Oakdale and Glenn-Colusa are subject to the tax and spend limitations of articles XIII A and XIII B, and are therefore eligible to claim reimbursement under article XIII B, section 6.

B. Some of the Test Claim Statutes and Regulations Impose New Requirements on Urban Retail Water Suppliers.

Test claim 10-TC-12 alleged all of Part 2.55 of Division 6 of the Water Code, which consists of sections 10608 through 10608.64. The following analysis addresses only those sections of Part 2.55 containing mandatory language, and those sections specifically alleged in the test claim narrative. Sections 10608.22, 10608.28, 10608.36, 10608.43, 10608.44, 10608.50, 10608.56, 10608.60, and 10608.64 are not analyzed below, because those sections were not specifically alleged to impose increased costs mandated by the state, and because they do not impose new requirements on local government.

1. Water Code sections 10608, 10608.4(d), 10608.12(a; p), and 10608.16(a), as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), do not impose any new requirements on local government.

Water Code section 10608 states the Legislature's findings and declarations, including: "Water is a public resource that the California Constitution protects against waste and unreasonable use..." and "Reduced water use through conservation provides significant energy and environmental benefits, and can help protect water quality, improve streamflows, and reduce greenhouse gas emissions." Subdivision (g), specifically invoked by the claimants,[245] states that "[t]he Governor has called for a 20 percent per capita reduction in urban water use statewide by 2020."[246] The plain language of this section establishes a goal, but does not, itself, impose any new requirements on local government.

Water Code section 10608.4 as added, states the "intent of the legislature," including, as highlighted by the claimants,[247] to "[e]stablish a method or methods for urban retail water suppliers to determine targets for achieving increased water use efficiency by the year 2020, in

[245] Exhibit A, Test Claim 10-TC-12, page 3.

[246] Water Code section 10608(a; d; g) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[247] Exhibit A, Test Claim 10-TC-12, page 3.

accordance with the Governor's goal of a 20 percent reduction."[248] The plain language of this section expresses legislative intent, and does not impose any new activities on local government

Water Code section 10608.16(a), as added, states that "[t]he state shall achieve a 20 percent reduction in urban per capita water use in California on or before December 31, 2020." In addition, section 10608.16(b) provides that the state "shall make incremental progress towards the state target specified in subdivision (a) by reducing urban per capita water use by at least 10 percent on or before December 31, 2015."[249] The plain language of this section is directed to the State generally, and does not impose any new mandated activities on local government.

Water Code section 10608.12 provides that "the following definitions govern the construction of this part:" An "urban retail water supplier " is defined as "a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes."[250] The claimants allege that the Water Conservation Act imposes unfunded state mandates on urban retail water suppliers, and that South Feather and Paradise "are 'urban retail water suppliers,' as defined."[251] Likewise, under section 10608.12, an "agricultural water supplier" is defined as "a water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water."[252] The claimants allege that this definition "expanded the definition of what constitutes an agricultural water supplier," and thus required a greater number of entities to adopt AWMPs and perform other activities under the Water Code.[253] However, whatever new activities may be required by the test claim statutes, the plain language of amended section 10608.12 does not impose any new requirements on urban retail water suppliers or agricultural water suppliers; section 10608.12 merely prescribes the applicability and scope of the other requirements of the test claim statutes.

Based on the foregoing, the Commission finds that sections 10608, 10608.4 10608.12, and 10608.16, pled as added, do not impose any new requirements on local government, and are therefore denied.

2. Water Code sections 10608.20(a; b; e; and j), 10608.24, and 10608.40, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7) impose new required activities on urban water suppliers.

Prior law required the preparation of an urban water management plan, and required urban water suppliers to update the plan every five years. The test claim statutes add additional information related to conservation goals to that required to be included in a supplier's UWMP, and authorize an extension of time from December 31, 2010 to July 1, 2011 for the adoption of the next UWMP. As added by the test claim statute, section 10608.20 provides, in pertinent part:

[248] Water Code section 10608.4 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[249] Water Code section 10608.16(a; b) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[250] Water Code section 10608.12(p) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[251] Exhibit A, 10-TC-12, page 2.

[252] Water Code section 10608.12(a) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[253] Exhibit A, 10-TC-12, page 8.

(a)(1) Each urban retail water supplier shall develop urban water use targets and an interim urban water use target by July 1, 2011. Urban retail water suppliers may elect to determine and report progress toward achieving these targets on an individual or regional basis, as provided in subdivision (a) of Section 10608.28, and may determine the targets on a fiscal year or calendar year basis.

(2) It is the intent of the Legislature that the urban water use targets described in subdivision (a) cumulatively result in a 20-percent reduction from the baseline daily per capita water use by December 31, 2020.

(b) An urban retail water supplier shall adopt one of the following methods for determining its urban water use target pursuant to subdivision (a):

(1) Eighty percent of the urban retail water supplier's baseline per capita daily water use.

(2) The per capita daily water use that is estimated using the sum of the following performance standards:

(A) For indoor residential water use, 55 gallons per capita daily water use as a provisional standard. Upon completion of the department's 2016 report to the Legislature pursuant to Section 10608.42, this standard may be adjusted by the Legislature by statute.

(B) For landscape irrigated through dedicated or residential meters or connections, water efficiency equivalent to the standards of the Model Water Efficient Landscape Ordinance set forth in Chapter 2.7 (commencing with Section 490) of Division 2 of Title 23 of the California Code of Regulations, as in effect the later of the year of the landscape's installation or 1992. An urban retail water supplier using the approach specified in this subparagraph shall use satellite imagery, site visits, or other best available technology to develop an accurate estimate of landscaped areas.

(C) For commercial, industrial, and institutional uses, a 10-percent reduction in water use from the baseline commercial, industrial, and institutional water use by 2020.

(3) Ninety-five percent of the applicable state hydrologic region target, as set forth in the state's draft 20x2020 Water Conservation Plan (dated April 30, 2009). If the service area of an urban water supplier includes more than one hydrologic region, the supplier shall apportion its service area to each region based on population or area.

(4) A method that shall be identified and developed by the department, through a public process, and reported to the Legislature no later than December 31, 2010…[254]

In addition, section 10608.20(e) provides that an urban retail water supplier "shall include in its urban water management plan due in 2010…the baseline daily per capita water use, urban water

[254] Water Code section 10608.20 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining estimates, including references to supporting data."[255]

And, section 10608.20(j) provides that an urban retail water supplier "shall be granted an extension to July 1, 2011…" to adopt a complying water management plan, and that an urban retail water supplier that adopts an urban water management plan due in 2010 "that does not use the methodologies developed by the department pursuant to subdivision (h) shall amend the plan by July 1, 2011 to comply with this part."[256]

Section 10608.40 provides that an urban retail water supplier shall also "report to [DWR] on their progress in meeting their urban water use targets as part of their [UWMPs] submitted pursuant to Section 10631."[257]

Section 10608.24 provides that each urban retail water supplier "shall meet its interim urban water use target by December 31, 2015," and "shall meet its [final] urban water use target by December 31, 2020."[258]

As discussed above, prior law required the adoption of an UWMP, which, pursuant to section 10631, included a detailed description and analysis of water supplies within the service area, including reliability of supply in normal, dry, and multiple dry years, and a description and evaluation of water demand management measures currently being implemented and scheduled for implementation.[259] Pursuant to existing section 10621, that plan was required to be updated "once every five years…in years ending in five and zero."[260] And, existing section 10631(e) also required identification and quantification of past, current and projected water use over a five-year period including, but not necessarily limited to, all of the following uses:

> (A) Single-family residential.
>
> (B) Multifamily.
>
> (C) Commercial.
>
> (D) Industrial.
>
> (E) Institutional and governmental.
>
> (F) Landscape.
>
> (G) Sales to other agencies.
>
> (H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

[255] Water Code section 10608.20(e) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[256] Water Code section 10608.20(j) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[257] Water Code section 10608.40 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[258] Water Code section 10608.24(a; b) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[259] Water Code section 10631 (Stats. 2009, ch. 534 (AB 1465)).

[260] Water Code section 10621 (Stats. 2007, ch. 64 (AB 1376)).

(I) Agricultural.[261]

However, nothing in prior law required the adoption of urban water use targets, baseline information on a per capita basis (as opposed to on a type of use basis), interim and final water use targets, assessment of present and proposed measures to achieve the targeted reductions, or a report on the supplier's progress toward meeting the reductions.

Based on the foregoing, the Commission finds that Water Code sections 10608.20, 10608.24, and 10608.40, as added by the test claim statute, impose new requirements on urban retail water suppliers, as follows:

- Develop urban water use targets and an interim urban water use targets by July 1, 2011.[262]
- Adopt one of the methods specified in section 10608.20(b) for determining an urban water use target.[263]
- Include in its urban water management plan due in 2010 the baseline daily per capita water use, urban water use target, interim urban water use target, and compliance daily per capita water use, along with the bases for determining those estimates, including references to supporting data.[264]
- Report to DWR on their progress in meeting urban water use targets as part of their UWMPs.[265]
- Amend its urban water management plan, by July 1, 2011, to allow use of technical methodologies developed by the department pursuant to subdivisions (b) and (h) of section 10608.20.[266]
- Meet interim urban water use target by December 31, 2015.[267]
- Meet final urban water use target by December 31, 2020.[268]

The activities required to meet the interim and final urban water use targets are intended to vary significantly among local governments based upon differences in climate, population density, levels of per capita water use according to plant water needs, levels of commercial, industrial, and institutional water use, and the amount of hardening that has occurred as a result of prior conservation measures implemented in different regions

[261] Water Code section 10631 (Stats. 2009, ch. 534 (AB 1465)).

[262] Water Code section 10608.20(a) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[263] Water Code section 10608.20(b) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[264] Water Code section 10608.20(e) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[265] Water Code section 10608.40 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[266] Water Code section 10608.20(i) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[267] Water Code section 10608.24(a) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[268] Water Code section 10608.24(b) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

throughout the state. Local variations, therefore, are not expressly stated in the test claim statutes.

3. Water Code section 10608.26, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), requires urban water suppliers to conduct at least one public hearing to allow community input regarding an urban retail water supplier's implementation plan.

Section 10608.26 provides that "[i]n complying with this part," an urban retail water supplier shall conduct at least one public hearing "to accomplish all of the following:" (1) allow community input regarding the urban retail water supplier's implementation plan; (2) consider the economic impacts of the urban retail water supplier's implementation plan; and (3) adopt one of the four methods provided in section 10608.20(b) for determining its urban water use target.[269]

The claimants assert that "prior to the Act, there was no requirement to conduct at least one public hearing to allow for community input regarding conservation, consider economic impacts of the implementing the 20% reduction [*sic*], or to adopt a method for determining an urban water use target."[270]

Section 10642, added by Statutes 1983, chapter 1009, required a public hearing prior to *adopting an UWMP*, as follows:

> Prior to adopting a plan, the urban water supplier shall make the plan available for public inspection and shall hold a public hearing thereon. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned water supplier pursuant to Section 6066 of the Government Code…[271]

However, section 10608.26 requires a public hearing for purposes of allowing public input regarding an implementation plan, considering the economic impacts of an implementation plan, or adopting a method for determining the urban water supplier's water use targets, as required by section 10608.20(b). DWR, the agency with responsibility for implementing the Water Conservation Act, has interpreted these two requirements as only requiring one hearing.[272] As the implementing agency, DWRs interpretation of the Act is entitled to great weight.[273]

Based on the foregoing, the Commission finds that section 10608.26 imposes a new and additional requirement on urban retail water suppliers, as follows:

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[269] Water Code section 10608.26(a) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[270] Exhibit A, 10-TC-12, page 8 [citing Water Code section 10608.26(a)(1-3)].

[271] Water Code section 10642 (Stats. 1983, ch. 1009) [citing Government Code section 6066 (Stats. 1959, ch. 954), which provides for publication once per week for two successive weeks in a newspaper of general circulation].

[272] Exhibit X, Department of Water Resources, *Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan*, pp. A-2 and 3-4.

[273] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 10-11.

Include in the public hearing on the adoption of the UWMP an opportunity for community input regarding the urban retail water supplier's implementation plan; consideration of the economic impacts of the implementation plan; and the adoption of a method, pursuant to section 10608.20(b), for determining urban water use targets.[274]

4. Water Code section 10608.42, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), does not impose any new requirements on local government.

Section 10608.42 provides:

> The department shall review the 2015 urban water management plans and report to the Legislature by December 31, 2016, on progress towards achieving a 20-percent reduction in urban water use by December 31, 2020. The report shall include recommendations on changes to water efficiency standards or urban water use targets in order to achieve the 20-percent reduction and to reflect updated efficiency information and technology changes.[275]

The claimants allege that section 10608.42 requires an UWMP, adopted by an urban retail water supplier, to "describe the urban retail water supplier's progress toward achieving the 20% reduction by 2020."[276] However, the plain language of this section is directed to DWR, and does not, itself, impose any new activities or requirements on local government.

Based on the foregoing, the Commission finds that section 10608.42 does not impose any new requirements on local government, and is therefore denied.

5. Water Code sections 10608.56 and 10608.8, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), do not impose any new requirements on local government.

Section 10806.56 provides that "[o]n and after July 1, 2016, an urban retail water supplier is not eligible for a water grant or loan awarded or administered by the state unless the supplier complies with this part."[277] The plain language of this section does not impose any new requirements on local government; the section only states the consequence of failing to comply with all other requirements of the Act.

Section 10608.8 provides that "[b]ecause an urban agency is not required to meet its urban water use target until 2020 pursuant to subdivision (b) of Section 10608.24, an urban retail water supplier's failure to meet those targets shall not establish a violation of law for purposes of any state administrative or judicial proceeding prior to January 1, 2021."[278] The plain language of

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[274] Water Code section 10608.26 ((Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)). See also Exhibit X, Department of Water Resources, *Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan*, pp. A-2 and 3-4.

[275] Water Code section 10608.42 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[276] Exhibit A, 10-TC-12, page 3.

[277] Water Code section 10608.56 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[278] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

this section does not impose any new requirements on local government; rather, the section states that no violation of law shall occur until after the date that urban water use targets are supposed to be met.

The claimants allege that Water Code section 10608.56 imposes reimbursable state-mandated costs, alleging that "[f]ailure to comply with the aforementioned mandates by South Feather and Paradise will result, on and after July 1, 2016, in ineligibility for water grants or loans awarded or administered by the State of California." In addition, the claimants allege that "a failure to meet the 20% target shall be a violation of law on and after January 1, 2021," citing Water Code section 10608.8.[279] The plain language of sections 10608.8 and 10608.56, as described above, do not impose any new activities or tasks on local government; the provisions that the claimants allege only state the consequences of failing to comply with all other requirements of the Act.

Based on the foregoing, the Commission finds that sections 10806.56 and 10806.8 do not impose any new requirements on local government, and are therefore denied.

C. Some of the Test Claim Statutes and Regulations Impose New Requirements on Non-exempt Agricultural Water Suppliers.

Chapter 4 of Part 2.55 of Division 6 of the Water Code consists of a single code section that addresses water conservation requirements for agricultural water suppliers: section 10608.48. The remaining provisions of the test claim statute addressing agricultural water suppliers were added in Part 2.8 of Division 6 of the Water Code, consisting of sections 10800-10853, and address agricultural water management planning requirements. Sections 10608.8 and 10828 provide for exemptions from the requirements of Part 2.55 and Part 2.8, respectively, under certain circumstances, which are addressed where relevant below.

1. Water Code section 10608.48(a-c), as amended by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), imposes new requirements on some agricultural water suppliers to implement efficient water management practices, including measurement and a pricing structure based in part on quantity of water delivered; and to implement up to fourteen other efficient water management practices, if locally cost effective and technically feasible.

Section 10608.48 provides for the implementation by agricultural water suppliers of specified critical efficient water management practices, including measurement and volume-based pricing; and *additional* efficient water management practices, where locally cost effective and technically feasible, as follows:

> (a) On or before July 31, 2012, an agricultural water supplier shall implement efficient water management practices pursuant to subdivisions (b) and (c).
>
> (b) Agricultural water suppliers shall implement *all of the following critical efficient management practices*:
>
> (1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 and to implement paragraph (2).

[279] Exhibit A, 10-TC-12, page 4.

(2) Adopt a pricing structure for water customers based at least in part on quantity delivered.

(c) Agricultural water suppliers shall implement *additional efficient management practices*, including, but not limited to, practices to accomplish all of the following, *if the measures are locally cost effective and technically feasible*:

(1) Facilitate alternative land use for lands with exceptionally high water duties or whose irrigation contributes to significant problems, including drainage.

(2) Facilitate use of available recycled water that otherwise would not be used beneficially, meets all health and safety criteria, and does not harm crops or soils.

(3) Facilitate the financing of capital improvements for on-farm irrigation systems.

(4) Implement an incentive pricing structure that promotes one or more of the following goals:

(A) More efficient water use at the farm level.

(B) Conjunctive use of groundwater.

(C) Appropriate increase of groundwater recharge.

(D) Reduction in problem drainage.

(E) Improved management of environmental resources.

(F) Effective management of all water sources throughout the year by adjusting seasonal pricing structures based on current conditions.

(5) Expand line or pipe distribution systems, and construct regulatory reservoirs to increase distribution system flexibility and capacity, decrease maintenance, and reduce seepage.

(6) Increase flexibility in water ordering by, and delivery to, water customers within operational limits.

(7) Construct and operate supplier spill and tailwater recovery systems.

(8) Increase planned conjunctive use of surface water and groundwater within the supplier service area.

(9) Automate canal control structures.

(10) Facilitate or promote customer pump testing and evaluation.

(11) Designate a water conservation coordinator who will develop and implement the water management plan and prepare progress reports.

(12) Provide for the availability of water management services to water users. These services may include, but are not limited to, all of the following:

(A) On-farm irrigation and drainage system evaluations.

(B) Normal year and real-time irrigation scheduling and crop evapotranspiration information.

(C) Surface water, groundwater, and drainage water quantity and quality data.

(D) Agricultural water management educational programs and materials for farmers, staff, and the public.

(13) Evaluate the policies of agencies that provide the supplier with water to identify the potential for institutional changes to allow more flexible water deliveries and storage.

(14) Evaluate and improve the efficiencies of the supplier's pumps.[280]

The claimants allege that section 10608.48 requires agricultural water suppliers (Oakdale and Glenn-Colusa) to "measure the volume of water delivered to their customers using best professional practices to achieve a minimum level of measurement accuracy at the farm-gate." In addition, they allege, agricultural water suppliers are required to "adopt a pricing structure for water customers based on the quantity of water delivered." The claimants further allege that "[i]f 'locally cost effective' and technically feasible, agricultural water suppliers are required to implement fourteen additional efficient management practices" specified in section 10608.48(c).[281]

The claimants argue that prior to the test claim statute, agricultural water suppliers "were not required to have a pricing structure based, at least in part, on the quantity of water delivered," and were not required to measure the volume of water delivered if it was not locally cost effective to do so. The claimants assert that "[w]hile subdivision (a) of Water Code section 531.10 was a preexisting obligation, subdivision (b) of that same section gave an exception to the farm-gate measurement requirement if the measurement devices were not locally cost effective." The claimants conclude that now "[t]he Act requires compliance with subdivision (a) regardless of whether it is locally cost effective."[282] In addition, the claimants assert that prior to the Act, "there was no requirement to implement up to 14 additional conservation measures if locally cost effective and technically feasible."[283]

Section 531.10 of the Water Measurement Law, as added by Statutes 2007, chapter 675 provides, in its entirety:

(a) An agricultural water supplier shall submit an annual report to the department that summarizes aggregated farm-gate delivery data, on a monthly or bimonthly basis, using best professional practices.

(b) Nothing in this article shall be construed to require the implementation of water measurement programs or practices that are not locally cost effective.

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[280] Water Code section 10608.48(a-c) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)) [emphasis added].

[281] Exhibit A, Test Claim 10-TC-12, page 4.

[282] Exhibit A, 10-TC-12, page 8.

[283] Exhibit A, 10-TC-12, page 8.

(c) It is the intent of the Legislature that the requirements of this section shall complement and not affect the scope of authority granted to the department or the board by provisions of law other than this article.

The plain language of section 531.10 required agricultural water suppliers to submit an annual report to DWR summarizing aggregated data on water delivered to individual agricultural customers using best professional practices, but only if water measurement programs or practices were locally cost effective.[284] Therefore, to the extent that water measurement programs or practices *were* locally cost effective, such activities were required to comply with prior law. Section 10608.48(b), in turn, does not impose a *new* requirement to "[m]easure the volume of water delivered to customers with sufficient accuracy to comply with [section 531.10(a),]" if such water measurement activities were already performed. However, section 10608.48(b) also requires an agricultural water supplier, *regardless of local cost-effectiveness*, to "[m]easure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 *and to implement paragraph (2),*" which requires suppliers to implement a pricing structure based at least in part on volume of water delivered. Therefore, section 10608.48(b) imposes a new requirement to the extent that prior law activities were not sufficient to also implement a pricing structure based at least in part on quantity of water delivered.

Moreover, Water Code section 10608.8 provides that "[t]he requirements of this part do not apply to an agricultural water supplier that is a party to the Quantification Settlement Agreement" (QSA), as defined in Statutes 2002, chapter 617, section 1, for as long as the QSA remains in effect.[285] The local agency parties to the QSA include the San Diego County Water Authority, Coachella Valley Water District, Imperial Irrigation District, and Metropolitan Water District of Southern California.[286] As a result, by the plain language of Water Code section 10608.8 those entities are exempt and are not mandated by the state to comply with the requirements of Part 2.55 of Division 6 of the Water Code, including section 10608.48.

Based on the foregoing, the Commission finds that section 10608.48 imposes new requirements on agricultural water suppliers, except those that are parties to the Quantification Settlement Agreement, as defined in Statutes 2002, chapter 617, section 1, for as long as QSA remains in effect, as follows:

- Measure the volume of water delivered to customers with sufficient accuracy to (1) comply with subdivision (a) of Water Code section 531.10, which previously imposed the requirement, with specified exceptions, for agricultural water suppliers to submit an annual report summarizing aggregated farm-gate delivery data, on a monthly or bi-monthly basis, using best professional practices; and (2) implement a pricing structure for water customers based at least in part on quantity of water delivered.[287]

[284] Water Code section 531.10 (Stats. 2007, Ch. 675 (AB 1404)).

[285] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[286] Exhibit X, Quantification Settlement Agreement, dated October 10, 2003.

[287] Water Code section 10608.48(b)(1) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

This activity is only newly required if measurement of farm-gate delivery data was not previously performed by the agricultural water supplier pursuant to a determination under section 531.10(b) that such measurement programs or practices were not locally cost effective, or if measurement data was not sufficient to implement a pricing structure based at least in part on quantity of water delivered.[288]

- Implement a pricing structure for water customers based at least in part on quantity of water delivered.[289]
- *If the measures are locally cost effective and technically feasible,* implement additional efficient management practices, including, but not limited to, practices to accomplish all of the following:

  (1) Facilitate alternative land use for lands with exceptionally high water duties or whose irrigation contributes to significant problems, including drainage.

  (2) Facilitate use of available recycled water that otherwise would not be used beneficially, meets all health and safety criteria, and does not harm crops or soils.

  (3) Facilitate the financing of capital improvements for on-farm irrigation systems.

  (4) Implement an incentive pricing structure that promotes one or more of the following goals:

  (A) More efficient water use at the farm level.

  (B) Conjunctive use of groundwater.

  (C) Appropriate increase of groundwater recharge.

  (D) Reduction in problem drainage.

  (E) Improved management of environmental resources.

  (F) Effective management of all water sources throughout the year by adjusting seasonal pricing structures based on current conditions.

  (5) Expand line or pipe distribution systems, and construct regulatory reservoirs to increase distribution system flexibility and capacity, decrease maintenance, and reduce seepage.

  (6) Increase flexibility in water ordering by, and delivery to, water customers within operational limits.

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[288] Water Code section 531.10(a-b) previously required reporting annually to the Department of Water Resources aggregated farm-gate delivery data, summarized on a monthly or bi-monthly basis, unless such measurement programs or practices were not locally cost effective. If an agricultural water supplier had not determined that such practices were not locally cost effective, then the prior law, Section 531.10(a) would have required measurement, and the activity is not therefore new.

[289] Water Code section 10608.48(b)(2) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

(7) Construct and operate supplier spill and tailwater recovery systems.

(8) Increase planned conjunctive use of surface water and groundwater within the supplier service area.

(9) Automate canal control structures.

(10) Facilitate or promote customer pump testing and evaluation.

(11) Designate a water conservation coordinator who will develop and implement the water management plan and prepare progress reports.

(12) Provide for the availability of water management services to water users. These services may include, but are not limited to, all of the following:

(A) On-farm irrigation and drainage system evaluations.

(B) Normal year and real-time irrigation scheduling and crop evapotranspiration information.

(C) Surface water, groundwater, and drainage water quantity and quality data.

(D) Agricultural water management educational programs and materials for farmers, staff, and the public.

(13) Evaluate the policies of agencies that provide the supplier with water to identify the potential for institutional changes to allow more flexible water deliveries and storage.

(14) Evaluate and improve the efficiencies of the supplier's pumps.[290]

2. Water Code sections 10608.48(d-f) and 10820-10829, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), impose new requirements on agricultural water suppliers, as defined pursuant to section 10608.12, to prepare and adopt on or before December 31, 2012, and to update on or before December 31, 2015, and every five years thereafter, an agricultural water management plan, as specified. However, many agricultural water suppliers, including all participants in the Central Valley Project and United States Bureau of Reclamation water contracts, are exempt from the requirement to *prepare and adopt* an agricultural water management plan pursuant to 10826, because they were already required by existing federal law to prepare a water conservation plan, which they may submit to satisfy this requirement.

As noted above, the test claim statute repealed and added Part 2.8 of Division 6 of the Water Code, commencing with section 10800. While a number of the activities alleged in these consolidated test claims were required by the prior provisions of the Water Code that were repealed and replaced by the test claim statute, those provisions were by their own terms no longer operative immediately prior to the effective date of the test claim statute. Former Water Code section 10855, as added by Statutes 1986, chapter 954, provided that "[t]his part shall

[290] Water Code section 10608.48(c) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

remain operative only until January 1, 1993..." Therefore, the provisions added by the test claim statute, which became effective on February 3, 2010, impose new requirements or activities.[291]

Section 10820, as added, provides that all agricultural water suppliers *shall prepare and adopt* an AWMP on or before December 31, 2012, and shall update that plan on December 31, 2015, and on or before December 31 every five years thereafter.[292]

Section 10826, as added, provides that the plan "shall do all of the following:"

> (a) Describe the agricultural water supplier and the service area, including all of the following:
>
> (1) Size of the service area.
>
> (2) Location of the service area and its water management facilities.
>
> (3) Terrain and soils.
>
> (4) Climate.
>
> (5) Operating rules and regulations.
>
> (6) Water delivery measurements or calculations.
>
> (7) Water rate schedules and billing.
>
> (8) Water shortage allocation policies.
>
> (b) Describe the quantity and quality of water resources of the agricultural water supplier, including all of the following:
>
> (1) Surface water supply.
>
> (2) Groundwater supply.
>
> (3) Other water supplies.
>
> (4) Source water quality monitoring practices.
>
> (5) Water uses within the agricultural water supplier's service area, including all of the following:
>
> (A) Agricultural.
>
> (B) Environmental.
>
> (C) Recreational.
>
> (D) Municipal and industrial.
>
> (E) Groundwater recharge.
>
> (F) Transfers and exchanges.

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[291] Bills introduced in an extraordinary session take effect 91 days after the final adjournment of that extraordinary session. (Cal. Const. Art. IV, Sec. 8(c)(1).) The 7th Extraordinary Session concluded on November 4, 2009. Thus, the effective date of SB X7 7 is February 3, 2010.

[292] Water Code section 10820 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

(G) Other water uses.

(6) Drainage from the water supplier's service area.

(7) Water accounting, including all of the following:

(A) Quantifying the water supplier's water supplies.

(B) Tabulating water uses.

(C) Overall water budget.

(8) Water supply reliability.

(c) Include an analysis, based on available information, of the effect of climate change on future water supplies.

(d) Describe previous water management activities.

(e) Include in the plan the water use efficiency information required pursuant to Section 10608.48.[293]

Meanwhile, section 10608.48(d) provides that agricultural water suppliers "shall include in the agricultural water management plans required pursuant to [section 10820] a report on which efficient water management practices have been implemented and are planned to be implemented, an estimate of the water use efficiency improvements that have occurred since the last report, and an estimate of the water use efficiency improvements estimated to occur five and 10 years in the future."[294]

Furthermore, section 10608.48 provides that if a supplier "determines that an efficient water management practice is not locally cost effective or technically feasible, the supplier shall submit information documenting that determination."[295] And, the section further provides that "[t]he data shall be reported using a standardized form developed pursuant to Section 10608.52."[296]

In addition, section 10828 provides that:

> (a) Agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, *may submit those water conservation plans to satisfy the requirements of Section 10826, if both of the following apply*:
>
> (1) The agricultural water supplier has adopted and submitted the water conservation plan to the United States Bureau of Reclamation within the previous four years.
>
> (2) The United States Bureau of Reclamation has accepted the water conservation plan as adequate.

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[293] Water Code section 10826 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[294] Water Code section 10608.48(d) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[295] Water Code section 10608.48(d) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[296] *Ibid*.

> (b) This part does not require agricultural water suppliers that are required to submit water conservation plans to the United States Bureau of Reclamation pursuant to either the Central Valley Project Improvement Act (Public Law 102-575) or the Reclamation Reform Act of 1982, or both, to prepare and adopt water conservation plans according to a schedule that is different from that required by the United States Bureau of Reclamation.[297]

And, section 10829 provides that an agricultural water supplier may satisfy the requirements "of this part" by adopting an UWMP pursuant to Part 2.6 or by participating in areawide, regional, watershed, or basinwide water management planning, so long as those plans meet or exceed the requirements of this part.[298]

Based on the plain language of section 10828, those local agencies who are CVP or USBR contractors may submit a copy of their water conservation plan already submitted to USBR in satisfaction of the requirements of section 10826 (which provides for the contents of an AWMP). In addition, section 10828(b) provides that CVP or USBR contractors are not required to adhere to the "schedule" for preparing and adopting AWMPs, as provided in section 10820, above. Therefore, the requirements of section 10820, to prepare and adopt an AWMP on or before December 31, 2012, and to update the AWMP on or before December 31, 2015 and every five years thereafter, do not apply to CVP or USBR contractors, who may instead rely on the schedule for updating and readopting their water conservation plans.

Both Glenn-Colusa and Oakdale are contractors with the United States Bureau of Reclamation (USBR) and as a result are required by federal law to prepare water conservation plans. Glenn-Colusa and Oakdale are also CVP contractors, as are dozens of other local agencies.[299]

As noted above, Water Code section 10608.8 provides that "[t]he requirements of this part do not apply to an agricultural water supplier that is a party to the Quantification Settlement Agreement" (QSA), as defined in Statutes 2002, chapter 617, section 1 for as long as QSA remains in effect.[300] Therefore, a supplier that is a party to the QSA is not mandated by the state to include the water use efficiency reporting requirements in the plan pursuant to section 10680.48.

Additionally, section 10608.48(f) provides that an agricultural water supplier "may meet the requirements of subdivisions (d) and (e) by submitting to [DWR] a water conservation plan submitted to the United States Bureau of Reclamation that meets the requirements described in Section 10828."[301] Therefore, the requirements to include in a supplier's AWMP a report on efficient water management practices and documentation on those practices determined not to be cost effective or technically feasible, pursuant to section 10608.48(d-e), do not apply to CVP or

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[297] Water Code section 10828 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[298] Water Code section 10829 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[299] Exhibit X, Bureau of Reclamation, Mid-Pacific Region, Central Valley Project (CVP) Water Contractors, dated March 4, 2014.

[300] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[301] Water Code section 10608.48(e; f) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

USBR contractors that prepare and submit water conservation plans to USBR.[302] The *Guidebook to Assist Agricultural Water Suppliers to Prepare a 2012 Agricultural Water Management Plan*, issued by DWR, "encourages" suppliers to file certain "documentation as an attachment with the USBR-accepted water management/conservation plan."[303] However, the plain language of section 10608.48(f) states that a supplier may satisfy the requirements of section 10608.48(d) and (e) by submitting to DWR its water conservation plan prepared for USBR. And, section 10828, as shown above, exempts CVP and USBR contractors from the requirement to prepare an AWMP in the first instance. Finally, pursuant to section 10829, the requirement to adopt an AWMP in the first instance does not apply if the supplier adopts a UWMP, or participates in regional water management planning.

Based on the foregoing, the Commission finds that newly added sections 10820 and 10826, and 10608.48(d-f), impose the following new requirements on agricultural water suppliers, except for suppliers that adopt a UWMP or participate in areawide, regional, watershed, or basinwide water management planning, and CVP and USBR contractors:

- On or before December 31, 2012, prepare and adopt an agricultural water management plan in accordance with section 10826.[304]
- On or before December 31, 2015, and every five years thereafter, update the agricultural water management plan, in accordance with section 10820 et seq.[305]
- If a supplier becomes an agricultural water supplier, as defined, after December 31, 2012, that agricultural water supplier shall prepare and adopt an agricultural water management plan within one year after the date that it has become an agricultural water supplier.[306]
- Include in the agricultural water management plans required pursuant to Water Code section 10800 et seq. a report on which efficient water management practices have been implemented and are planned to be implemented, an estimate of the water use efficiency improvements that have occurred since the last report,

[302] Water Code section 10608.48(f) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[303] Exhibit X, *Guidebook to Assist Agricultural Water Suppliers to Prepare a 2012 Agricultural Water Management Plan*, page 11, "The agricultural water suppliers that submit a plan to USBR may meet the requirements of section 10608.48 (d) and (e) [report of EWMPs implemented, planned for implementation, and estimate of efficiency improvements, as well as documentation for not locally cost effective EWMPs] by submitting the USBR-accepted plan to DWR. "DWR *encourages* CVPIA/RRA water suppliers to also provide a report on water use efficiency information (required by section 10608.48(d);see Section 3.7 of this Guidebook)." Emphasis added.

[304] Water Code sections 10820; 10826 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[305] Water Code sections 10820; 10826 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[306] Water Code section 10820 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

and an estimate of the water use efficiency improvements estimated to occur five and 10 years in the future.[307]

In addition, an agricultural water supplier that is a party to the Quantification Settlement Agreement (QSA), as defined in Statutes 2002, chapter 617, section 1 is not subject to this requirement for as long as the QSA remains in effect.[308]

- If an agricultural water supplier determines that an efficient water management practice is not locally cost effective or technically feasible, the supplier shall submit information documenting that determination.[309]

  In addition, an agricultural water supplier that is a party to the Quantification Settlement Agreement (QSA), as defined in Statutes 2002, chapter 617, section 1 is not subject to this requirement for as long as the QSA remains in effect.[310]

- Report the data using a standardized form developed pursuant to Water Code section 10608.52.[311]

  An agricultural water supplier that is a party to the Quantification Settlement Agreement (QSA), as defined in Statutes 2002, chapter 617, section 1 is not subject to this requirement for as long as the QSA remains in effect.[312]

3. Section 10608.48(g-i), as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), does not impose any new activities on local government.

Section 10608.48(g) provides that on or before December 31, 2013, DWR shall submit to the Legislature a report on agricultural efficient water management practices that have been implemented or are planned to be implemented, and an assessment of those practices and their effects on agricultural operations. Section 10608.48(h) states that DWR "may update the efficient water management practices required pursuant to [section 10608.48(c)]," but only after conducting public hearings. Section 10608.48(i) provides that DWR "shall adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirement" of section 10608.48(b).

The plain language of these sections section 10608.48(g-i) is directed to DWR, and does not impose any activities or requirements on local government.

4. Sections 10821, 10841, 10842, 10843, and 10844, as added by Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), impose new requirements on agricultural water suppliers.

[307] Water Code section 10608.48(d) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[308] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[309] Water Code section 10608.48(d) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[310] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[311] Water Code section 10608.48(e) (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[312] Water Code section 10608.8 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

Water Code section 10821, as added, provides that an agricultural water supplier required to prepare an AWMP pursuant to this part, "shall notify each city or county within which the supplier provides water supplies that the agricultural water supplier will be preparing the plan or reviewing the plan and considering amendments or changes to the plan."[313]

In addition, newly added section 10841 requires that the plan be made available for public inspection and that a public hearing shall be held as follows:

> Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan. Prior to the hearing, notice of the time and place of hearing shall be published within the jurisdiction of the publicly owned agricultural water supplier pursuant to Section 6066 of the Government Code. A privately owned agricultural water supplier shall provide an equivalent notice within its service area and shall provide a reasonably equivalent opportunity that would otherwise be afforded through a public hearing process for interested parties to provide input on the plan...[314]

Section 10842 provides that an agricultural water supplier shall implement its AWMP "in accordance with the schedule set forth in its plan."[315]

Following adoption of an AWMP, section 10843 requires an agricultural water supplier to submit a copy of its AWMP, no later than 30 days after adoption, to DWR and to the following affected or interested entities:

> (2) Any city, county, or city and county within which the agricultural water supplier provides water supplies.
>
> (3) Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.
>
> (4) Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.
>
> (5) Any city or county library within which jurisdiction the agricultural water supplier provides water supplies.
>
> (6) The California State Library.
>
> (7) Any local agency formation commission serving a county within which the agricultural water supplier provides water supplies.[316]

Finally, newly added section 10844 requires an agricultural water supplier to make its water management plan available for public review via the internet, as follows:

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[313] Water Code section 10821 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[314] Water Code section 10841 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[315] Water Code section 10842 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[316] Water Code section 10843 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

(a) Not later than 30 days after the date of adopting its plan, the agricultural water supplier shall make the plan available for public review on the agricultural water supplier's Internet Web site.

(b) An agricultural water supplier that does not have an Internet Web site shall submit to [DWR], not later than 30 days after the date of adopting its plan, a copy of the adopted plan in an electronic format. [DWR] shall make the plan available for public review on [its] Internet Web site.[317]

The prior provisions of the Water Code pertaining to the adoption and implementation of AWMPs, as explained above, were inoperative by their own terms as of January 1, 1993.[318] Therefore, the requirements to hold a public hearing, to implement the plan in accordance with the schedule, to submit copies to DWR and other specified local entities, and to make the plan available by either posting the plan on the supplier's web site, or by sending an electronic copy to DWR for posting on its web site, are new activities with respect to prior law.

However, section 10828, as discussed above, provides that USBR or CVP contractors may satisfy the requirements of section 10826 by submitting their water conservation plans adopted within the previous four years pursuant to the Central Valley Improvement Act or the Reclamation Reform Act of 1982.[319] This section does not expressly exempt CVP or USBR contractors from all requirements of Part 2.8, but only from the content requirements of the plan itself, and the requirement to adopt according to the "schedule" set forth in section 10820, as discussed above. Accordingly, DWR's *Guidebook to Assist Agricultural Water Suppliers to Prepare a 2012 [AWMP]* provides:

> All agricultural water suppliers required to prepare new agricultural water management/conservation plans must prepare and complete their plan in accordance with Water Code Part 2.8, Article 1 and Article 3 requirements for notification, public participation, adoption, and submittal (refer to Section 3.1 for details). *The federal review process may incorporate many requirements specified in Part 2.8, Articles 1 and 3; as such the federal process may meet the requirements of Part 2.8, otherwise, the agricultural water supplier would have to complete those requirements in Part 2.8, Articles 1 and 3 that are not already a part of the federal review pro*cess.[320]

Article 1 of Part 2.8 includes section 10821, which requires an agricultural water supplier to notify the city or county that it will be preparing an AWMP. Therefore, to the extent that the "federal process" of adopting a water conservation plan for USBR or CVP also requires notice to the city or county, this activity is not newly required. Article 3 of Part 2.8 includes sections 10840-10845, pertaining to the adoption and implementation of AWMPs. Those requirements include, as discussed above, noticing and holding a public hearing; implementing the plan in

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[317] Water Code section 10844 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[318] See former Water Code sections 10840-10845; 10855 (Stats. 1986, ch. 954).

[319] Water Code section 10828 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[320] Exhibit X, *Guidebook to Assist Agricultural Water Suppliers to Prepare a 2012 Agricultural Water Management Plan*, page 94 [emphasis added].

accordance with the schedule set forth in the plan; submitting a copy of the AWMP to specified state and local entities within 30 days after adoption; and making the AWMP available on the supplier's website, or submitting the AWMP for posting on DWR's website. To the extent that the "federal process" satisfies those requirements, they are not newly required by the test claim statutes.

In addition, as noted above, section 10829 provides that an agricultural water supplier may satisfy the requirements "of this part" by adopting an UWMP pursuant to Part 2.6 or by participating in areawide, regional, watershed, or basinwide water management planning, so long as those plans meet or exceed the requirements of this part.[321] That exception would include all of the notice and hearing requirements identified below.

Based on the foregoing, the Commission finds that Water Code sections 10821, 10841, 10842, 10843, and 10844 impose new requirements on agricultural water suppliers, except those that adopt an UWMP or participate in areawide, regional, watershed, or basinwide water management planning, and except to the extent that suppliers that are USBR or CVP contractors have water conservation plans that satisfy the AWMP adoption requirements, as follows:

- Notify the city or county within which the agricultural supplier provides water supplies that it will be preparing the AWMP or reviewing the AWMP and considering amendments or changes.[322]
- Prior to adopting a plan, the agricultural water supplier shall make the proposed plan available for public inspection, and shall hold a public hearing on the plan.[323]
- Prior to the hearing, notice of the time and place of hearing shall be published in a newspaper within the jurisdiction of the publicly owned agricultural water supplier once a week for two successive weeks, as specified in Government Code 6066.[324]
- Implement the AWMP in accordance with the schedule set forth in the AWMP.[325]
- An agricultural water supplier shall submit to the following entities a copy of its plan no later than 30 days after the adoption of the plan. Copies of amendments or changes to the plans shall be submitted to the entities identified within 30 days after the adoption of the amendments or changes.
    - DWR.
    - Any city, county, or city and county within which the agricultural water supplier provides water supplies.
    - Any groundwater management entity within which jurisdiction the agricultural water supplier extracts or provides water supplies.

[321] Water Code section 10829 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[322] Water Code section 10821(Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[323] Water Code section 10841 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[324] Water Code section 10841 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[325] Water Code section 10842 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

- Any urban water supplier within which jurisdiction the agricultural water supplier provides water supplies.
- Any city or county library within which jurisdiction the agricultural water supplier provides water supplies.
- The California State Library.
- Any local agency formation commission serving a county within which the agricultural water supplier provides water supplies.[326]

- An agricultural water supplier shall make its agricultural water management plan available for public review on its web site not later than 30 days after adopting the plan, or for an agricultural water supplier that does not have a web site, submit an electronic copy to the Department of Water Resources not later than 30 days after adoption, and the Department shall make the plan available for public review on its web site.[327]

5. Agricultural Water Measurement Regulations, California Code of Regulations, Title 23, Division 6, sections 597 through 597.4, Register 2012, Number 28.

California Code of Regulations, title 23, section 597 provides that under authority included in Water Code section 10608.48(i), DWR is required to adopt regulations that provide for a range of options that agricultural water suppliers may use or implement to comply with the measurement requirements of section 10609.48(b).[328] The plain language of this section does not impose any new activities or requirements on local government.

Section 597.1 provides that an agricultural water supplier providing water to less than 10,000 irrigated acres, excluding acres that receive only recycled water, is not subject to this article, and a supplier providing water to 10,000 or more irrigated acres but less than 25,000 irrigated acres, excluding acres that receive only recycled water, is not subject to this article unless sufficient funding is provided pursuant to Water Code section 10853. A supplier providing water to 25,000 irrigated acres or more, excluding acres that receive only recycled water, is subject to this article. A supplier providing water to wildlife refuges or habitat lands, as specified, is subject to this article. A *wholesale* agricultural water supplier is subject to this article at the location at which control of the water is transferred to the receiving water supplier, but the wholesale supplier is not required to measure the ultimate deliveries to customers. A canal authority or other entity that conveys water through facilities owned by a federal agency is not subject to this article. An agricultural water supplier that is a party to the QSA, as defined in Statutes 2002, chapter 617, section 1, is not subject to this article. And finally, DWR is not subject to this article.[329] None of the above-described provisions of section 597.1 impose any new requirements or activities on local government.

[326] Water Code section 10843 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[327] Water Code section 10844 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[328] Code of Regulations, title 23, section 597 (Register 2012, No. 28).

[329] Code of Regulations, title 23, section 597.1 (Register 2012, No. 28).

Section 597.2 provides definitions of "accuracy," "agricultural water supplier," "approved by an engineer," "best professional practices," "customer," "delivery point," "existing measurement device," "farm-gate," "irrigated acres," "manufactured device," "measurement device," "new or replacement measurement device," "recycled water," and "type of device."[330] Based on the plain language of 597.2, the definitions provided in section 597.2 do not impose any new requirements or activities on local government.

Section 597.3 requires an agricultural water supplier to measure surface water and groundwater that it delivers to its customers and provides a range of options to comply with section 10608.48(i), as follows:

> An agricultural water supplier subject to this article shall measure surface water and groundwater that it delivers to its customers pursuant to the accuracy standards in this section. The supplier may choose any applicable single measurement option or combination of options listed in paragraphs (a) or (b) of this section. Measurement device accuracy and operation shall be certified, tested, inspected and/or analyzed as described in §597.4 of this article.
>
> **(a) Measurement Options at the Delivery Point or Farm-gate of a Single Customer**
>
> An agricultural water supplier shall measure water delivered at the delivery point or farm-gate of a single customer using one of the following measurement options. The stated numerical accuracy for each measurement option is for the volume delivered. If a device measures a value other than volume, for example, flow rate, velocity or water elevation, the accuracy certification must incorporate the measurements or calculations required to convert the measured value to volume as described in §597.4(e).
>
> (1) An existing measurement device shall be certified to be accurate to within +12% by volume,
>
> and,
>
> (2) A new or replacement measurement device shall be certified to be accurate to within:
>
> (A) ±5% by volume in the laboratory if using a laboratory certification;
>
> (B) ±10% by volume in the field if using a non-laboratory certification.
>
> **(b) Measurement Options at a Location Upstream of the Delivery Points or Farm-gates of Multiple Customers**
>
> (1) An agricultural water supplier may measure water delivered at a location upstream of the delivery points or farm-gates of multiple customers using one of the measurement options described in §597.3(a) if the downstream individual customer's delivery points meet either of the following conditions:

[330] Code of Regulations, title 23, section 597.2 (Register 2012, No. 28).

(A) The agricultural water supplier does not have legal access to the delivery points of individual customers or group of customers needed to install, measure, maintain, operate, and monitor a measurement device.

(B) An engineer determines that, due to small differentials in water level or large fluctuations in flow rate or velocity that occur during the delivery season at a single farm-gate, accuracy standards of measurement options in §597.3(a) cannot be met by installing a measurement device or devices (manufactured or on-site built or in-house built devices with or without additional components such as gauging rod, water level control structure at the farm-gate, etc.). If conditions change such that the accuracy standards of measurement options in §597.3(a) at the farm-gate can be met, an agricultural water supplier shall include in its Agricultural Water Management Plan, a schedule, budget and finance plan to demonstrate progress to measure water at the farm-gate in compliance with §597.3(a) of this article.

(2) An agricultural water supplier choosing an option under paragraph (b)(l) of this section shall provide the following current documentation in its Agricultural Water Management Plan(s) submitted pursuant to Water Code §10826:

(A) When applicable, to demonstrate lack of legal access at delivery points of individual customers or group of customers downstream of the point of measurement, the agricultural water supplier's legal counsel shall certify to the Department that it does not have legal access to measure water at customers delivery points and that it has sought and been denied access from its customers to measure water at those points.

(B) When applicable, the agricultural water supplier shall document the water measurement device unavailability and that the water level or flow conditions described in §597.3(b)(l)(B) exist at individual customer's delivery points downstream of the point of measurement as approved by an engineer.

(C) The agricultural water supplier shall document all of the following criteria about the methodology it uses to apportion the volume of water delivered to the individual downstream customers:

(i) How it accounts for differences in water use among the individual customers based on but not limited to the duration of water delivery to the individual customers, annual customer water use patterns, irrigated acreage, crops planted, and on-farm irrigation system, and;

(ii) That it is sufficient for establishing a pricing structure based at least in part on the volume delivered, and;

(iii) That it was approved by the agricultural water supplier's governing board or body.[331]

Thus, one option under these regulations, in order to measure the volume of water delivered, as required by section 10608.48, is measurement "at the delivery point or farm-gate of a single customer" using an existing measurement device certified to be accurate to within 12 percent by volume, or a new measurement device certified to be accurate within 5 percent if certified in a laboratory or within 10 percent if certified in the field. Another option is to measure upstream of a delivery point or farm gate if the supplier does not have legal access to the delivery point for an individual customer, or if the standards of measurement cannot be met due to large fluctuations in flow rate or velocity during the delivery season. If this option is chosen, appropriate documentation explaining the option must be provided, as described above.

The claimants allege that section 597.3 requires agricultural water suppliers to measure at a delivery point or farm gate "by either (1) using an existing measurement device, certified to be accurate within ±12% by volume or (2) a new or replacement measurement device, certified to be accurate within ±5% by volume in the laboratory if using a laboratory certification or ±10% by volume in the field if using a non-laboratory certification." In addition, the claimants allege that the regulations provide for "limited exceptions" if the supplier is unable to measure at the farm-gate, which allow, in certain circumstances, for upstream measurement.[332] The claimants assert that prior to these regulations, "there was no requirement to measure water delivered to the farm-gate of *each* single customer, with limited exception."[333]

DWR argues that these regulations merely provide options, and are not therefore a mandate. Specifically, DWR asserts that "[n]o local government is required to comply with those regulations." DWR asserts that "the regulations exist as a resource for agricultural water suppliers who wish to comply with certain requirements…described in the 2009 Water Law." DWR concludes that "[the regulations] are optional, and the suppliers are free to comply with the law in other ways."[334]

Section 10608.48(i) provides that DWR "shall adopt regulations that provide for a range of options that agricultural water suppliers may use or implement" to comply with the measurement requirements of subdivision (b).[335] The phrase "may use or implement" suggests that the regulations provide a choice for agricultural water suppliers, rather than a mandate.

However, Section 10608.48(b) states that agricultural water suppliers "shall implement all of the following critical efficient management practices…(1) Measure the volume of water delivered to customers with sufficient accuracy to comply with subdivision (a) of Section 531.10 and to [adopt a pricing structure based in part on quantity of water delivered]."[336] Moreover, the plain language of section 597.3 of the regulations, as cited above, states that an agricultural water

[331] Code of Regulations, title 23, section 597.3 (Register 2012, No. 28).

[332] Exhibit B, 12-TC-01, page 4.

[333] Exhibit B, 12-TC-01, page 6.

[334] Exhibit D, DWR Comments, page 11.

[335] Water Code section 10608.48 (Stats. 2009-2010, 7th Ex. Sess., ch. 4 (SBX7 7)).

[336] *Ibid*.

supplier "shall measure surface water and groundwater that it delivers to customers pursuant to the accuracy standards in this section." The language states that the supplier "may choose any applicable single measurement option or combination of options listed in paragraphs (a) or (b) of this section."[337] There is no express provision for choosing a measurement option or combination of options not listed in section 597.3. Although an agricultural water supplier may pick which one of the regulatory options to comply with, it "shall" pick one of them based on the plain language of section 597.3. As a result, most agricultural water suppliers are required to implement one of the measurement options provided by 597.3. As discussed above though, there are several water suppliers exempt from this requirement, including parties to the QSA, suppliers providing water to less than 10,000 irrigated acres, excluding acres that receive only recycled water, and suppliers providing water to more than 10,000 irrigated acres but less than 25,000 irrigated acres, excluding acres that receive only recycled water, unless sufficient funding is provided pursuant to Water Code section 10853. Thus, section 597.3 requires the following for those agencies which are not exempt:

- Measure water delivered at the delivery point or farm-gate of a single customer using one of the following options.
  - An existing measurement device certified to be accurate to within ±12% by volume.
  - A new or replacement measurement device certified to be accurate to within:
    - ±5% by volume in the laboratory if using a laboratory certification;
    - ±10% by volume in the field if using a non-laboratory certification.

    If a device measures a value other than volume (e.g., flow rate, velocity or water elevation) the accuracy certification must incorporate the measurements or calculations required to convert the measured value to volume.[338]
- Measure water delivered at a location upstream of the delivery points or farm-gates of multiple customers if:
  - The supplier does not have legal access to the delivery points of individual customers or group of customers needed to install, measure, maintain, operate, and monitor a measurement device; or
  - An engineer determines that, due to small differentials in water level or large fluctuations in flow rate or velocity that occur during the delivery season, accuracy standards of measurement cannot be met by installing a measurement device or devices.[339]
- And, when a supplier chooses to measure water delivered at an upstream location:

[337] Code of Regulations, title 23, section 597.3 (Register 2012, No. 28).

[338] Code of Regulations, title 23, section 597.3(a) (Register 2012, No. 28).

[339] Code of Regulations, title 23, section 597.3(b) (Register 2012, No. 28).

- Provide, where applicable, documentation to demonstrate the lack of legal access at delivery points of individual or groups of customers downstream of the point of measurement; or documentation of the water measurement device unavailability and that water level or flow conditions exist that prohibit meeting accuracy standards, as approved by an engineer.
- Document the following about its apportionment of water delivered to individual customers:
  - How the supplier accounts for differences in water use among individual customers based on the duration of water delivery to the individual customers, annual customer water use patterns, irrigated acreage, crops planted, and on-farm irrigation system;
  - That it is sufficient for establishing a pricing structure based at least in part on the volume of water delivered; and
  - That it was approved by the agricultural water supplier's governing board or body.[340]

Section 597.4, also alleged in this consolidated test claim, requires that measurement devices be certified and documented as follows:

(a) Initial Certification of Device Accuracy

The accuracy of an existing, new or replacement measurement device or type of device, as required in §597.3, shall be initially certified and documented as follows:

(1) For existing measurement devices, the device accuracy required in section 597.3(a) shall be initially certified and documented by either:

(A) Field-testing that is completed on a random and statistically representative sample of the existing measurement devices as described in §597.4(b)(1) and §597.4(b)(2). Field-testing shall be performed by individuals trained in the use of field-testing equipment, and documented in a report approved by an engineer.

Or,

(B) Field-inspections and analysis completed for every existing measurement device as described in §597.4(b)(3). Field-inspections and analysis shall be performed by trained individuals in the use of field inspection and analysis, and documented in a report approved by an engineer.

(2) For new or replacement measurement devices, the device accuracy required in sections 597.3 (a)(2) shall be initially certified and documented by either:

[340] Code of Regulations, title 23, section 597.3(b) (Register 2012, No. 28).

(A) Laboratory Certification prior to installation of a measurement device as documented by the manufacturer or an entity, institution or individual that tested the device following industry-established protocols such as the National Institute for Standards and Testing (NIST) traceability standards. Documentation shall include the manufacturer's literature or the results of laboratory testing of an individual device or type of device.

Or,

(B) Non-Laboratory Certification after the installation of a measurement device in the field, as documented by either:

(i) An affidavit approved by an engineer submitted to the agricultural water supplier of either (1) the design and installation of an individual device at a specified location, or (2) the standardized design and installation for a group of measurement devices for each type of device installed at specified locations.

Or,

(ii) A report submitted to the agricultural water supplier and approved by an engineer documenting the field-testing performed on the installed measurement device or type of device, by individuals trained in the use of field testing equipment.

(b) Protocols for Field-Testing and Field-Inspection and Analysis of Existing Devices

(1) Field-testing shall be performed for a sample of existing measurement devices according to manufacturer's recommendations or design specifications and following best professional practices. It is recommended that the sample size be no less than 10% of existing devices, with a minimum of 5, and not to exceed 100 individual devices for any particular device type. Alternatively, the supplier may develop its own sampling plan using an accepted statistical methodology.

(2) If during the field-testing of existing measurement devices, more than one quarter of the samples for any particular device type do not meet the criteria pursuant to §597.3(a), the agricultural water supplier shall provide in its Agricultural Water Management Plan, a plan to test an additional 10% of its existing devices, with a minimum of 5, but not to exceed an additional 100 individual devices for the particular device type. This second round of field-testing and corrective actions shall be completed within three years of the initial field-testing.

(3) Field-inspections and analysis protocols shall be performed and the results shall be approved by an engineer for every existing measurement device to demonstrate that the design and installation standards used for the installation of existing measurement devices meet the accuracy standards

of §597.3(a) and operation and maintenance protocols meet best professional practices.

(c) Records Retention

Records documenting compliance with the requirements in §597.3 and §597.4 shall be maintained by the agricultural water supplier for ten years or two Agricultural Water Management Plan cycles.

(d) Performance Requirements

(1) All measurement devices shall be correctly installed, maintained, operated, inspected, and monitored as described by the manufacturer, the laboratory or the registered Professional Engineer that has signed and stamped certification of the device, and pursuant to best professional practices.

(2) If an installed measurement device no longer meets the accuracy requirements of §597.3(a) based on either field-testing or field-inspections and analysis as defined in sections 597.4 (a) and (b) for either the initial accuracy certification or during operations and maintenance, then the agricultural water supplier shall take appropriate corrective action, including but not limited to, repair or replacement to achieve the requirements of this article.

(e) Reporting in Agricultural Water Management Plans

Agricultural water suppliers shall report the following information in their Agricultural Water Management Plan(s):

(1) Documentation as required to demonstrate compliance with §597.3 (b), as outlined in section §597.3(b)(2), and §597.4(b)(2).

(2) A description of best professional practices about, but not limited to, the (1) collection of water measurement data, (2) frequency of measurements, (3) method for determining irrigated acres, and (4) quality control and quality assurance procedures.

(3) If a water measurement device measures flow rate, velocity or water elevation, and does not report the total volume of water delivered, the agricultural water supplier must document in its Agricultural Water Management Plan how it converted the measured value to volume. The protocols must follow best professional practices and include the following methods for determining volumetric deliveries:

(A) For devices that measure flow-rate, documentation shall describe protocols used to measure the duration of water delivery where volume is derived by the following formula: Volume = flow rate x duration of delivery.

(B) For devices that measure velocity only, the documentation shall describe protocols associated with the measurement of the cross-sectional area of flow and duration of water delivery, where volume is

derived by the following formula: Volume = velocity x cross-section flow area x duration of delivery.

(C) For devices that measure water elevation at the device (e.g. flow over a weir or differential elevation on either side of a device), the documentation shall describe protocols associated with the measurement of elevation that was used to derive flow rate at the device. The documentation will also describe the method or formula used to derive volume from the measured elevation value(s).

(4) If an existing water measurement device is determined to be out of compliance with §597.3, and the agricultural water supplier is unable to bring it into compliance before submitting its Agricultural Water Management Plan in December 2012, the agricultural water supplier shall provide in its 2012 plan, a schedule, budget and finance plan for taking corrective action in three years or less.

Thus, the plain language of section 597.4 requires agricultural water suppliers to certify and document the initial accuracy of "existing, new or replacement measurement device[s]," as specified.[341] In addition, section 597.4 provides that field-testing "shall be performed" following "best professional practices," and either sampling "no less than 10% of existing devices," as recommended by the department, or developing a "sampling plan using an accepted statistical methodology." Then, if field testing results in more than a quarter of any particular devices failing the accuracy criteria described in section 597.3(a), above, the supplier "shall provide in its Agricultural Water Management Plan, a plan to test an additional 10% of its existing devices…"[342] In addition, section 597.4 provides that records documenting compliance "shall be maintained…for ten years or two Agricultural Water Management Plan cycles."[343] Section 597.4 further provides that "all measurement devices shall be correctly installed, maintained, operated, inspected, and monitored," and if a device no longer meets the accuracy requirements of section 597.3, the supplier "shall take appropriate corrective action," including repair or replacement, if necessary.[344] And finally, section 597.4 requires agricultural water suppliers to report additional information regarding their compliance and "best professional practices" for water measurement in their agricultural water measurement plan.[345]

As noted above, some agricultural water suppliers may have been required pursuant to section 531.10 to measure farm-gate water deliveries.[346] To the extent that those measurement programs or practices satisfy the requirements of these regulations, the regulations do not impose new activities.[347] In addition, for any agricultural water supplier that is also an urban water supplier,

[341] Code of Regulations, title 23, section 597.4(a) (Register 2012, No. 28).

[342] Code of Regulations, title 23, section 597.4(b) (Register 2012, No. 28).

[343] Code of Regulations, title 23, section 597.4(c) (Register 2012, No. 28).

[344] Code of Regulations, title 23, section 597.4(d) (Register 2012, No. 28).

[345] Code of Regulations, title 23, section 597.4(e) (Register 2012, No. 28).

[346] Water Code section 531.10 (Stats. 2007, ch. 675 (AB 1404)).

[347] See discussion above addressing section 10608.48(a-c).

existing sections 525 through 527 required those entities to install water meters on new and existing service connections, as specified.[348] To the extent that any such water meter on an agricultural service connection satisfies the measurement requirements of these regulations, the regulations do not impose any new activities or requirements.

Based on the foregoing, the Commission finds that section 597.4 imposes new requirements on agricultural water suppliers not exempt from the water measurement requirements, and not already required by existing law to take part in the programs or practices of water measurement, discussed above, that would satisfy the accuracy standards of these regulations, as follows:

- Certify the initial accuracy of existing measurement devices by either:
    - Field-testing that is completed on a random and statistically representative sample of the existing measurement devices, performed by individuals trained in the use of field-testing equipment, and documented in a report approved by an engineer; or
    - Field inspections and analysis for every existing measurement device, performed by individuals trained in the use of field inspection and analysis, and documented in a report approved by an engineer.[349]
- Certify the initial accuracy of new or replacement measurement devices by either:
    - Laboratory certification prior to installation of the device as documented by the manufacturer or an entity, institution, or individual that tested the device following industry-established protocols such as the National Institute of Standards and Testing traceability standards. Documentation shall include the manufacturer's literature or the results of laboratory testing of an individual device or type of device; or
    - Non-laboratory certification after installation of a measurement device in the field, documented by either:
        - An affidavit approved by an engineer submitted to the agricultural water supplier of either (1) the design and installation of an individual device at a specified location, or (2) the standardized design and installation for a group of measurement devises for each type of device installed at specified locations; or
        - A report submitted to the agricultural water supplier and approved by an engineer documenting the field-testing performed on the installed measurement device or type of device, by individuals trained in the use of field testing equipment.[350]
- Ensure that field-testing is performed as follows:

[348] Section 525 as amended by statutes 2005, chapter 22; Section 527 as amended by statutes 2005, chapter 22; Section 526 as amended by Statutes 2004, chapter 884.

[349] Code of Regulations, title 23, section 597.4(a)(1) (Register 2012, No. 28).

[350] Code of Regulations, title 23, section 597.4(a)(2) (Register 2012, No. 28).

- Field-testing shall be performed for a sample of existing measurement devices according to the manufacturer's recommendations or design specifications and following best professional practices.
- If more than one quarter of the samples for any particular device type do not meet the accuracy criteria specified in section 597.3(a), the supplier shall provide in its Agricultural Water Management Plan a plan to test an additional 10% of its existing devices, with a minimum of 5, but not to exceed 100 additional devices for the particular device type, and shall complete the second round of field-testing and corrective actions within three years of the initial field-testing.
- Field inspections and analysis protocols shall be performed and the results shall be approved by an engineer for every existing measurement device to demonstrate that the design and installation standards used for the installation of existing measurement devices meet the accuracy standards specified in section 597.3(a) and that operation and maintenance protocols meet best professional practices.[351]

- Maintain records documenting compliance with the requirements of sections 597.3 and 597.4 for ten years or two Agricultural Water Management Plan cycles.[352]
- Ensure that all measurement devices are correctly installed, maintained, operated, inspected, and monitored as described by the manufacturer, the laboratory or the registered Professional Engineer that has signed and stamped certification of the device, and pursuant to best professional practices.[353]
- If an installed measurement device no longer meets the accuracy requirements of section 597.3(a) based on either field-testing or field-inspections and analysis for either the initial accuracy certification or during operations and maintenance, take appropriate corrective action, including but not limited to, repair or replacement of the device.[354]
- Report the information listed below in its Agricultural Water Management Plan(s). :
    - Documentation, as required, to demonstrate that an agricultural water supplier that chooses to measure upstream of a delivery point or farm-gate for a customer or group of customers has complied justified the reason to do so, and has taken appropriate steps to ensure that measurements can be allocated to the customer or group of customers sufficiently to support a pricing structure based at least in part on quantity of water delivered.

[351] Code of Regulations, title 23, section 597.4(b) (Register 2012, No. 28).

[352] Code of Regulations, title 23, section 597.4(c) (Register 2012, No. 28).

[353] Code of Regulations, title 23, section 597.4(d)(1) (Register 2012, No. 28).

[354] Code of Regulations, title 23, section 597.4(d)(2) (Register 2012, No. 28).

- A description of best professional practices about, but not limited to, the (1) collection of water measurement data, (2) frequency of measurements, (3) method for determining irrigated acres, and (4) quality control and quality assurance procedures.
- If a water measurement device measures flow rate, velocity or water elevation, and does not report the total volume of water delivered, the agricultural water supplier must document in its Agricultural Water Management Plan how it converted the measured value to volume. The protocols must follow best professional practices and include the following methods for determining volumetric deliveries:
    - For devices that measure flow-rate, documentation shall describe protocols used to measure the duration of water delivery where volume is derived by the following formula: Volume = flow rate x duration of delivery.
    - For devices that measure velocity only, the documentation shall describe protocols associated with the measurement of the cross-sectional area of flow and duration of water delivery, where volume is derived by the following formula: Volume = velocity x cross-section flow area x duration of delivery.
    - For devices that measure water elevation at the device (e.g. flow over a weir or differential elevation on either side of a device), the documentation shall describe protocols associated with the measurement of elevation that was used to derive flow rate at the device. The documentation will also describe the method or formula used to derive volume from the measured elevation value(s).
- If an existing water measurement device is determined to be out of compliance with §597.3, and the agricultural water supplier is unable to bring it into compliance before submitting its Agricultural Water Management Plan in December 2012, the agricultural water supplier shall provide in its 2012 plan, a schedule, budget and finance plan for taking corrective action in three years or less.[355]

D. The Test Claim Statutes and Regulations do not Result in Increased Costs Mandated by the State, Because the Claimants Possess Fee Authority Sufficient as a Matter of Law to Cover the Costs of any New Mandated Activities.

As the preceding analysis indicates, many of the requirements of the test claim statutes are not new, at least with respect to *some* urban or agricultural water suppliers, because suppliers were previously required to perform substantially the same activities under prior law. Additionally, many of the alleged test claim statutes do not impose any requirements at all, based on the plain language. However, even if the new requirements identified above could be argued to mandate a new program or higher level of service, the Commission finds that the costs incurred to comply

[355] Code of Regulations, title 23, section 597.4(e) (Register 2012, No. 28).

with those requirements are not costs mandated by the state, within the meaning of article XIII B, section 6 and Government Code section 17514, because all affected entities have fee authority, sufficient as a matter of law to cover the costs of any mandated activities.

Government Code section 17556(d) provides that the Commission shall not find costs mandated by the state, as defined in section 17514, if the local government claimant "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." The California Supreme Court upheld the constitutionality of Government Code section 17556, subdivision (d), in *County of Fresno v. State of California.*[356] The Court, in holding that the term "costs" in article XIII B, section 6 excludes expenses recoverable from sources other than taxes, stated:

> 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. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) 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. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) 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 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.*[357]

Accordingly, in *Connell v. Superior Court of Sacramento County,*[358] the Santa Margarita Water District, among others, was denied reimbursement based on its authority to impose fees on water users. The water districts submitted evidence that funding the mandated costs with fees was not practical: "rates necessary to cover the increased costs [of pollution control regulations] would render the reclaimed water unmarketable and would encourage users to switch to potable water."[359] The court concluded that "[t]he question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs." Water Code section 35470 authorized the levy of fees to "correspond to the cost and value of the service," and "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."[360] The court held that the Districts had not demonstrated "that anything in Water Code section 35470 limits the authority of the Districts to levy fees 'sufficient' to cover their costs,"

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[356] *County of Fresno v. State of California, supra*, 53 Cal.3d 482.

[357] *Id*, at p. 487 [emphasis added].

[358] (Cal. Ct. App. 3d Dist. 1997) 59 Cal.App.4th 382.

[359] *Id*, at p. 399.

[360] *Ibid*.

and that therefore "the economic evidence presented by SMWD to the Board [of Control] was irrelevant and injected improper factual questions into the inquiry."[361]

Likewise, in *Clovis Unified School District v. Chiang*, the court found that the SCO was not acting in excess of its authority in reducing reimbursement claims to the full extent of the districts' authority to impose fees, even if there existed practical impediments to collecting the fees. In making its decision the court noted that the concept underlying Government Code sections 17514 and 17556(d) is that "[t]o the extent a local agency or school district 'has the authority' to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost."[362] The court further noted that, "this basic principle flows from common sense as well." The court reasoned: "As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"[363]

1. The claimants have statutory authority to levy fees or charges for the provision of water.

Both Finance and DWR asserted, in comments on the test claim, that the test claim statutes are not reimbursable pursuant to section 17556(d). Finance argued that the claimants are "statutorily authorized to charge a fee for the delivery of water," and 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."[364] DWR asserted that "Senate Bill 1017, which amended the [Urban Water Management Act] in 1994," provides authority for an urban water supplier "to recover the costs of preparing its [urban water management plan] and implementing the reasonable water conservation measures included in the plan in its water rates."[365]

For the following reasons, the Commission finds that the claimants have statutory authority to establish and increase fees or assessments for the provision of water services.

Water Code section 35470 provides generally that "[a]ny [water] district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor." Section 35470 further provides that "[t]he charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district *may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful purpose*."[366] In addition, section 50911 provides that an irrigation district may "[a]dopt a schedule of rates to be charged by the district for furnishing water for the irrigation of district lands."[367]

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[361] *Connell*, *supra*, (1997) 59 Cal.App.4th at p. 401.

[362] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, at p. 812.

[363] *Ibid.*

[364] Exhibit C, Finance Comments on Test Claim, page 1.

[365] Exhibit D, DWR Comments on Test Claim, pages 8-9 [citing Water Code section 10654].

[366] Water Code section 35470 (Stats. 2007, ch. 27 (SB 444)) [emphasis added].

[367] Water Code section 50911 (Stats. 2007, ch. 27 (SB 444)).

More specifically, and pertaining to the requirements of the test claim statutes, Water Code section 10654 permits an urban water supplier to "recover in its rates" for the costs incurred in preparing and implementing water conservation measures.[368] And, section 10608.48 expressly requires agricultural water suppliers to "[a]dopt a pricing structure for water customers based at least in part on quantity delivered."[369] This provision indicates that the Legislature intended user fees to be an essential component of the water conservation practices called for by the Act. And finally, Water Code section 10608.32, as added *within the test claim statute*, provides that all costs incurred pursuant to this part may be recoverable in rates subject to review and approval by the Public Utilities Commission.[370]

Based on the foregoing, the Commission finds that both agricultural and urban water suppliers have statutory authority to impose or increase fees to cover the costs of new state-mandated activities.

2. Nothing in Proposition 218, case law, or any prior Commission Decision, alters the analysis of the claimants' statutory fee authority.

The claimants argue that both Finance and DWR cite *Connell v. Superior Court* and "ignore the most recent rulings on the subject of Proposition 218 where their exact arguments were considered and overruled by the Commission in *Discharge of Stormwater Runoff*, 07-TC-09." The claimants argue that "under Proposition 218, Claimants' customers could reject the Board's action to establish or increase fees or assessments, yet Claimants would still be obligated to implement the mandates."[371] In comments on the draft proposed decision, the claimants reiterate, more urgently:

> The Commission should not accept its staff's invitation to ignore a prior Commission decision that is directly on point, and which was based on a plain reading of the California Constitution, all in order to reject the test claim here. To do so would undermine the Commission' s credibility, eviscerate the Commission's Constitutional duty to reimburse agencies for new state mandates, and have far-reaching negative effects.[372]

For the following reasons, the claimant's argument is unsound. In *Connell v. Superior Court, supra* the court held that "[t]he question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs," and that the economic viability of the necessary rate increases "was irrelevant and injected improper factual questions into the inquiry."[373] *Connell* did not address the possible impact of Proposition 218 on the districts' fee authority, because the districts did not "contend that the services at issue…are among the 'many services'

[368] Water Code section 10654 (Stats. 1994, ch. 609 (SB 1017)).

[369] Water Code section 10608.48 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[370] Water Code section 10608.32 (Stats. 2009-2010, 7th Ex. Sess. ch. 4 (SBX7 7)).

[371] Exhibit E, Claimant Rebuttal Comments, pages 11-12 [citing *Discharge of Stormwater Runoff*, 07-TC-09, page 107].

[372] Exhibit R, Claimant Comments on Draft Proposed Decision, page 14.

[373] *Connell*, *supra*, (1997) 59 Cal.App.4th at p. 401.

impacted by Proposition 218."[374] The claimants here argue that *Connell* is no longer good authority, because Proposition 218 has changed the landscape of special districts' legal authority to impose fees or charges.

Proposition 218, adopted by the voters in 1996, also known as the "Right to Vote on Taxes Act," declared its purpose to protect taxpayers "by limiting the methods by which local governments exact revenue from taxpayers without their consent." Proposition 218 added articles XIII C and XIII D to the Constitution;[375] article XIII C addresses assessments, while article XIII D addresses user fees and charges. The claimants allege that article XIII D, section 6, specifically, imposes a legal or constitutional hurdle to imposing or increasing fees, which undermines any analysis of statutory fee authority under Government Code section 17556(d).

The requirements of article XIII D, section 6 to which claimants refer provide as follows:

> Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:
>
> (1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.
>
> (2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. *If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.*
>
> [¶…¶]
>
> (c) Voter Approval for New or Increased Fees and Charges. *Except for fees or charges for sewer, water, and refuse collection services*, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures

[374] 59 Cal.App.4th at p. 403.

[375] Exhibit X, Text of Proposition 218.

similar to those for increases in assessments in the conduct of elections under this subdivision.[376]

The claimants have acknowledged that they have fee authority, absent the restrictions of articles XIII C and XIII D: "Claimants do not deny that, before the passage Proposition 218, the Water Code would have provided Claimants sufficient authority, pursuant to their governing bodies' discretion, to unilaterally establish or increase fees or charges for the provision of water services."[377] After Proposition 218, the claimants argue they are now "authorized to do no more than *propose* a fee increase that can be rejected" by majority protest.[378] Furthermore, the claimants maintain that the Commission's decision in *Discharge of Stormwater Runoff* recognized the limitations imposed by article XIII D, section 6, and the effect on local governments' fee authority: "[f]inding *Connell* inapposite, the Commission observed that 'The voting requirement of Proposition 218 does not impose a mere practical or economic hurdle, as in *Connell*, but a legal and constitutional one.'"[379]

However, claimants' reliance on the Commission's prior action is misplaced, and claimants' assertions about the effect of Proposition 218 on the law of *Connell* are overstated. Commission decisions are not precedential, and in any event the current test claim is distinguishable from the analysis in *Discharge of Stormwater Runoff*. The Commission, in *Discharge of Stormwater Runoff*, deviated from the rule of *Connell*, and found that Proposition 218, as *applied to the claimants* and *the mandated activities in that test claim*, constituted a legal and constitutional barrier to increasing fees. The test claim was brought by the County of San Diego and a number of cities, and alleged various mandated activities and costs related to reducing stormwater pollution.[380] The Commission found that although the County and the Cities had a generalized fee authority based on regulatory and police powers,[381] "[w]ith some exceptions, local government fees or assessments that are incident to property ownership are subject to voter approval under article XIII D of the California Constitution, as added by Proposition 218 in 1996."[382] The Commission reasoned that "it is possible that the local agency's voters or property owners may never adopt the proposed fee or assessment, but the local agency would still be required to comply with the state mandate,"[383] and that "[a]bsent compliance with the Proposition 218 election and other procedures, there is no legal authority to impose or raise fees within the meaning of Government Code section 17556, subdivision (d)."[384] Thus, the

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[376] California Constitution, article XIII D, section 6 (added, November 5, 1996, by Proposition 218) [emphasis added].

[377] Exhibit R, Claimant Comments on Draft Proposed Decision, page 11.

[378] Exhibit R, Claimant Comments on Draft Proposed Decision, page 15.

[379] Exhibit E, Claimant Rebuttal Comments, page 12 [citing *Discharge of Stormwater Runoff*, 07-TC-09, page 107].

[380] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 1.

[381] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 103.

[382] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 105.

[383] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 106.

[384] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 107.

Commission concluded that "[t]he voting requirement of Proposition 218 does not impose a mere practical or economic hurdle, as in *Connell*, but a legal and constitutional one."[385]

Here, Proposition 218 does not impose a legal and constitutional hurdle, because fees for the provision of water services are expressly exempt from the voter approval requirements of Proposition 218.[386] The Proposition 218 Omnibus Implementation Act, enacted specifically to construe Proposition 218, defines "water" as "any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water."[387] Thus, an urban or agricultural water supplier that undertakes measures to ensure the conservation of water, to produce more water, and enhance the quality and reliability of its supply, is providing water service, within the meaning of the Omnibus Act. The statutory and regulatory metering and other conservation practices required of the claimants therefore describe "water service." Unlike the test claimants in *Discharge of Stormwater Runoff* (cities and counties), the services for which fees or charges would be increased are expressly exempt from the voter approval requirements in article XIII D, section 6(c), and the decision and reasoning of the Commission in *Discharge of Stormwater Runoff* is not relevant. Therefore, the Commission's earlier decision is distinguishable on the very same ground that renders *Connell* significantly poignant. The claimants cannot rely on the unwillingness of voters to raise fees, because the fees in question fall, based on the plain language of the Constitution, outside voter-approval requirement of article XIII D, section 6(c).

Claimants acknowledge that fees for water service "are excused from the formal election requirement under article XIII D section 6(c), [but] the majority protest provision in subdivision (a)(2) still applies and constitutes a legal barrier to Claimants' fee authority."[388] Claimants therefore argue that they "find themselves required to implement and pay for the newly mandated activities, yet are authorized to do no more than *propose* a fee increase that can be rejected by a simple majority of affected customers."[389]

However, the so-called "majority protest provision," which claimants allege constitutes a legal barrier to claimants' fee authority, presents either a mixed question of fact and law, which has not been demonstrated based on the evidence in the record, or a legal issue that is incumbent on the courts first to resolve. 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,[390] or provide evidence that a court determined that Proposition 218 represents a

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[385] Exhibit X, Statement of Decision, *Discharge of Stormwater Runoff*, 07-TC-09, page 107 [citing *Connell v. Superior Court*, *supra*, 59 Cal.App.4th 382, at p. 401].

[386] See California Constitution, article XIII D, section 6(c).

[387] Government Code section 53750(m) (Stats. 2002, ch. 395).

[388] Exhibit R, Claimant Comments on Draft Proposed Decision, page 14.

[389] Exhibit R, Claimant Comments on Draft Proposed Decision, page 15.

[390] If a claimant were to provide evidence that it had tried and failed to impose or increase fees, that evidence could constitute costs "first incurred," within the meaning of Government Code section 17551, and a claimant otherwise barred from reimbursement under section 17556(d) could thus potentially demonstrate that it had incurred costs mandated by the state, as defined in

constitutional hurdle to fee authority as a matter of law. 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 protests against the proposed fee or charge [being] presented by a majority of owners of the identified parcels…"[391]

Based on the foregoing analysis, the Commission cannot find costs mandated by the state, within the meaning of Government Code section 17514, because the claimants have sufficient fee authority, as a matter of law, to establish or increase fees or charges to cover the costs of any new required activities.

V. Conclusion

Based on the foregoing analysis, the Commission finds that the Water Conservation Act of 2009, enacted as Statutes 2009-2010, 7th Extraordinary Session, chapter 4 (SBX7 7), and the Agricultural Water Measurement Regulations issued by the Department of Water Resources, found at Code of Regulations, title 23, section 597 et seq., do not impose a reimbursable state-mandated program on urban retail water suppliers or agricultural water suppliers within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission therefore denies this test claim.

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section 17514. The Commission does not make findings on this issue, but merely observes the potentiality.

[391] See article XIII D, section 6(a)(2).

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RE: **Decision**

Water Conservation, 10-TC-12 and 12-TC-01
Water Conservation Act of 2009 et al.
South Feather Water and Power Agency, Paradise Irrigation District,
Oakdale Irrigation District, and Glenn-Colusa Irrigation District, Claimants

On December 5, 2014, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

Dated: December 12, 2014

Heather Halsey, Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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.

On December 12, 2014, I served the:

Decision
Water Conservation, 10-TC-12 and 12-TC-01
Water Conservation Act of 2009 et al.
South Feather Water and Power Agency, Paradise Irrigation District,
Oakdale Irrigation District, and Glenn-Colusa Irrigation District, Claimants

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 12, 2014 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/24/14

Claim Number: 10-TC-12 and 12-TC-01

Matter: Water Conservation

Claimants: Glenn-Colusa Irrigation District
Oakdale Irrigation District
Paradise Irrigation District
South Feather Water and Power Agency

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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