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November 12, 2013

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Re: Notice of Pending Dismissal of Test Claim and Notice of Opportunity for a Local Agency, Subject to the Tax and Spend Limitation of Article 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
Agricultural Water Measurement, 12-TC-01;
California Code of Regulations, Title 23, Section 597 et seq.; Register 2012, No. 28;
Richvale Irrigation District and Biggs-West Gridley Water District, Co-Claimants.

Dear Mr. Cooper:

On June 30, 2011, the South Feather Water and Power Agency, Paradise Irrigation District, Richvale Irrigation District, and Biggs-West Gridley Water District filed a joint test claim, *Water Conservation Act of 2009*, 10-TC-12, with the Commission on State Mandates (Commission), which was deemed complete. On February 28, 2013, Richvale Irrigation District and Biggs-West Gridley Water District filed a joint test claim, *Agricultural Water Measurement*, 12-TC-01, which was also deemed complete. The two test claims were consolidated and renamed *Water Conservation*, 10-TC-12 and 12-TC-01, on March 6, 2013.

Commission staff has begun analysis of these consolidated test claims, and, it has become apparent that the Commission does not have jurisdiction over the *Agricultural Water Measurement*, 12-TC-01 claim, because the claimants are not eligible to claim for state-mandated costs.

To be eligible to claim reimbursement for state mandated costs, a claimant must be both: 1) a local agency; and 2) subject to the tax and spend limitations of articles XIII A and B of the California Constitution. The Richvale Irrigation District and the Biggs-West Gridley Water Districts do not meet these requirements and are therefore ineligible to claim reimbursement for state-mandated costs. As a result, the Commission does not have jurisdiction over the *Agricultural Water Measurement* (12-TC-01) claim and will not have the authority to hear and decide on this claim unless an eligible claimant, subject to the requirements of the alleged mandate, takes it over by substitution of parties.

A. Some Special Districts are Not Subject to the Taxing and Spending Limitations of Article XIII A and B of the California Constitution and Therefore are Not Eligible Claimants Before the Commission.

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. "Costs mandated by the state" is defined to mean "any increased costs which a local agency or school district is required to incur…as a result of any statute…or any executive order implementing any statute…which mandates a new program or higher level of service of an

existing program."[1] "Local agency," in turn, is defined to include "any city, county, special district, authority, or other political subdivision of the state."[2] However, not every "local agency," as defined, is an eligible claimant before the Commission. In addition to an entity fitting the description of Government Code section 17518, the entity must also be subject to the tax and spend limitations of articles XIII A and B.

The California Supreme Court, in *County of Fresno v. State of California*,[3] discussing the meaning of article XIII B, section 6, 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*.[4]

Thus, article XIII B, section 6 does not require reimbursement for expenses that are recoverable from sources other than tax revenue. Accordingly, in *Redevelopment Agency of San Marcos v. Commission on State Mandates*,[5] 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...[6]

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[1] Government Code section 17514 (Stats. 1984, ch. 1459).

[2] Government Code secton 17518 (Stats. 1984, ch. 1459).

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

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

[5] (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976

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

Therefore, pursuant to *County of Fresno*, *supra*, and *Redevelopment Agency of San Marcos*, *supra*, a local agency that does not collect and expend "proceeds of taxes" is not an eligible claimant before the Commission.

Thus, if a local agency is funded solely from service charges, fees, or assessments, revenues which are excluded from the taxing and spending limits, that agency is not subject to the revenue limits of article XIII B, and not entitled to reimbursement under article XIII B, section 6 and is thus not an eligible claimant for mandates purposes. A local agency cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[7]

B. Richvale Irrigation District and Biggs-West Gridley Water District are Not Subject to Article XIII B, Section 6 and are Therefore Not Eligible Claimants.

In its comments on the test claim, the Department of Finance asserted that "[n]ot all independent special districts are subject to article XIII A and article XIII B," and that "[e]ach of the Claimants should be directed to provide information that will enable the Commission on State Mandates to determine if they are subject to tax and spending limitations."[8] In rebuttal comments, the claimants asserted that after Proposition 13, "Claimants, as 'local governments' are subject to the limitation on total appropriations set forth in Article XIII B of the California Constitution."[9]

On August 22, 2013, Commission staff issued a request for further briefing, specifically asking whether the four claimant districts could establish that they are subject to both the tax limitations of article XIII A, and the spending limitations of article XIII B. Commission staff explained:

> Based on the self-reported exemption from the appropriations limit over the last three years' Special Districts Annual Reports, unless the Districts can produce evidence that the revenues in question are in fact proceeds of taxes as defined in article XIII A, and subject to the appropriations limit of article XIII B to that extent, these test claims will be dismissed for lack of jurisdiction.[10]

The State Controller's Office responded to the Commission's request, stating that for fiscal years 2010-2011, 2011-2012, and 2012-2013, Richvale and Biggs-West Gridley did not receive proceeds of taxes, while South Feather and Paradise did receive proceeds of taxes.[11] The claimants responded to Commission staff's request, asserting that the Special Districts Annual Report cannot be relied upon, and that all four districts were subject to new mandates that they were unable to raise money to meet. The claimants also provided information indicating that South Feather and Paradise most likely are eligible claimants, because they collect property tax revenue, but Richvale and Biggs-West Gridley are not.

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

[8] Department of Finance Comments, dated 06/07/13.

[9] Claimant Rebuttal Comments, dated 08/07/13, at p. 26.

[10] Commission Request for Additional Information and Briefing, dated 08/22/13, at p. 6.

[11] State Controller's Office Comments, dated 10/07/13.

Richvale and Biggs-West Gridley do not, of their own admission, collect tax revenue, and are therefore not subject to article XIII B. The claimants stated that "Richvale and Biggs do not receive property tax revenue; however… both districts would be required to expend the 'proceeds of taxes' to implement the mandates if their customers refused under Proposition 218 to authorize revenue to fund the mandates."[12]

The claimants argue that "the Commission should not…determine eligibility based on whether or not such entities receive property tax revenue and are subject to the appropriations limit."[13] The claimants suggest that "[r]ather, the Commission should inquire if the claimant is subject to the limitations on raising taxes or revenues set forth in Propositions 13 and 4, or 218, thereby making that claimant ill equipped to fund and implement the mandate." [14] In addition, the claimants argue that "[g]iven Proposition 218's restrictions on increasing revenues through fees and assessments, the imposition of state mandates will, of necessity, have to fall on the proceeds of taxes or the subject agency will simply be in violation of the mandate."[15]

Proposition 218 (1996), defines a tax as "any levy, charge, or exaction of any kind imposed by a local government," *except the following*:

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
>
> (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
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> (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.[16]

Article XIII D addresses fees and assessments, and requires that both be limited to the cost of providing the service or product to the particular parcel and/or user. In addition, article XIII D, sections 4 and 6 describe the specific requirements of approval for new assessments and fees. Section 4 requires that a proposed assessment include notice to the property owners affected, and cannot be imposed if there is a majority protest, as defined. Meanwhile article XIII D, section 6 provides that an agency seeking to impose or increase fees must identify the parcels affected and the amount proposed, and must provide written notice by mail to the record owners of the identified parcels, including notice of a public hearing, at which the agency is required to "consider all protests." Written protests by a majority of owners of the affected parcels are sufficient to defeat a fee increase under article XIII D, section 6. Furthermore, new or increased

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[12] Claimant Comments, dated 09/23/13.

[13] Id.

[14] Id.

[15] Id, at p. 3.

[16] California Constitution, article XIII C, section 1(e).

fees are required to "not exceed the funds required to provide the property related service;" "not be used for any purpose other than that for which the fee or charge was imposed;" "not exceed the proportional cost of the service attributable to the parcel;" and be "actually used by, or immediately available to, the owner of the property in question." In addition, new fees or charges may not be imposed for general services such as police and fire protection. Finally, voter approval is required "[e]xcept for fees or charges for sewer, *water*, and refuse collection services."[17]

The claimants argue, above, that the districts have "achieved the revenue/spending balance" on the basis of providing services for water, and that the additional costs and activities imposed by the test claim statutes and regulations would "upset" that balance, and compel the districts to impose new fees or assessments that would exceed the costs of providing water services, or divert existing revenue sources to activities beyond the scope of existing fees or assessments. However, only a very narrow view of "service," would hold that fees or assessments cannot be increased to comply with requirements necessary to provide the service in question to end users or property owners. The test claim statutes and regulations impose requirements on the continued provision of water and/or irrigation services by the claimant districts. Based on the plain language of article XIII D, a fee increase for sewer or water services does not require voter approval, and can be imposed unless written protests are received by a majority of property owners.[18] There is no evidence that the districts have made any attempt to raise its fees to comply with the mandate, or that such an increase would be defeated by the voters.

Based on the claimants' interpretation of the facts, and their entreaty to the Commission to consider their financial straits under articles XIII C and XIII D, the claimants apparently would have the Commission ignore controlling constitutional, statutory and case law, and instead provide reimbursement to all local governments on the basis of a subjective means-test. However, that is not the law. *Subvention is required only when costs in question can be recovered solely from tax revenues*.[19]

Alternatively, the claimant argument would require the Commission to determine that a fee or assessment related to water conservation is in fact a tax under articles XIII C and XIII D. It is not within the Commission's purview to determine whether a fee imposed under Proposition 218 is in fact a tax, since the Commission's authority is statutory and is limited to hearing and deciding on mandate claims. Until a court determines that a specific fee increase is in fact a tax and Richvale or Biggs-West Gridley is forced to use that tax money to pay for the costs of a mandated program, and is subject to the spending limit of article XIII B, those districts are not eligible claimants before the Commission.

C. Because Richvale Irrigation District and Biggs-West Gridley Water District are Not Subject to Article XIII A and B of the California Constitution, the Commission Cannot Exercise Jurisdiction Over 12-TC-01.

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[17] California Constitution, article XIII D, section 6 (adopted November 5, 1996).

[18] See article XIII D, section 6.

[19] *Redevelopment Agency v. Commission on State Mandates* (1997), 55 Cal.App.4th 976; See also *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App.4th 1264.

As a result of the ineligibility of Richvale or Biggs-West Gridley to seek reimbursement for state mandated programs, the Commission does not have jurisdiction over the *Agricultural Water Measurement*, 12-TC-01 claim and will not have the authority to hear and decide on this claim unless an eligible claimant, subject to the requirements of the alleged mandate, takes it over by substitution of parties.

A copy of this notice will be posted to the Commission's web site for 60 days prior to the dismissal of the test claim. A local agency, subject to the tax and spend limitations of article XIII A and B and subject to the alleged mandate in 12-TC-01, may submit a request to take over the claim. If no other local agency, subject to the tax and spend limitations of article XIII A and B of the California Constitution, takes over the claim by substitution of parties within 60 days of service of this notice, the executive director shall issue a letter dismissing the claim. The last day to take over this claim is **January 12, 2014**.

A copy of this notice may be found at http://csm.ca.gov/pendingclaims/wca.shtml on the Commission's website.

Please contact Jason Hone at (916) 323-3562 if you have questions.

Sincerely,

Heather Halsey
Executive Director