

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim of:)	
)	CSM 97-238-01
)	
The City of San Diego)	
)	<i>Nonprofit, Special Use Property Requirements</i>
)	
)	
)	REBUTTAL TO THE DEPARTMENT OF
)	FINANCE'S OPPOSITION TO THE CITY
)	OF SAN DIEGO'S TEST CLAIM

The City of San Diego ("CITY") stands behind the arguments set forth in its Test Claim and its belief that all eminent domain actions are not properly thrown into the "discretionary" category. Therefore, the CITY respectfully suggests that the Department of Finance did not correctly evaluate the merits of the CITY's claim.

Additionally, as the CITY has already set forth in its Test Claim, *City of Merced v. State of California*, 153 Cal.App.3d 777 (1984), does not address the type of situation that is presented by the CITY in its Test Claim. *City of Merced* only addresses a "normal" eminent domain

situation. Claims for loss of goodwill are normal within an eminent domain action, as are claims for severance damages. The facts of the current situation, however, rise above a normal eminent domain situation in that the Legislature has dictated the specific manner in which entities are required to appraise special use property. But for the designated Legislation, the CITY would have been allowed to appraise the subject property utilizing one or more of the three accepted appraisal methodologies and would not now be seeking reimbursement from the State for the “normal” cost associated with condemning the subject property. Instead, the Legislature has demanded that the CITY appraise the subject property utilizing a “high bred” methodology that is not otherwise used in appraising property for eminent domain purposes.

The CITY further suggests that the *City of Merced* case has been used in a manner that far exceeds the intent of the deciding Court. As asserted in the CITY’s Test Claim, the Legislature would NOT have specifically set forth the process for reimbursement to local agencies as a result of the enactment of Senate Bill 821 if they had intended that local agencies would never be allowed reimbursement for situations involving eminent domain. Senate Bill 821 dealt ONLY with eminent domain. And yet, the Legislature included as part of that Bill language that specifically set forth the process for reimbursement. Therefore, the CITY believes that the inclusion of the language was for the specific purpose of allowing local entities to seek reimbursement.

The City of San Diego respectfully requests that the Commission and Staff disregard *City of Merced* in this particular situation as not being on-point and evaluate the City of San Diego’s case on its merits.

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The CITY has not presented any new assertions or representations of fact as part of this Rebuttal. Therefore, no new documentary evidence (including state constitutional provisions, federal statutes, executive orders, administrative and/or court decisions) is submitted herewith.

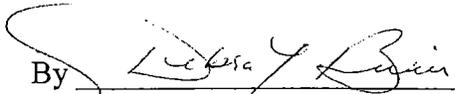
CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on 10/27/, 1977, at San Diego, California, by:

CASEY GWINN, City Attorney

By


Debra J. Bevier, Deputy
Attorneys for the City of San Diego

PROOF OF SERVICE

Test Claim Name: Claim of the City of San Diego

Test Claim Number: CSM-97-238-01

Government Code Sec.: SB 821 wherein Code of Civil Proc. Sections 1235.155 & 1263.3

Chapters: Evidence Code section 824 was added and section 823 was amended

Issue: Nonprofit, Special Use Property Requirements

Originated: 09-Sep-97

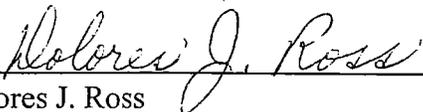
I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1200 Third Avenue, Suite 1100, San Diego, CA 92101.

On October 27, 1997, I served the attached **Rebuttal to the Department of Finance's Opposition to the City of San Diego's Test Claim** to the following state agencies and interested parties by placing a true copy thereof in a sealed envelope with first class postage fully prepaid and placing in the United States mail at San Diego, California, and to the Commission on State Mandates via Federal Express:

SEE 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 October 27, 1997, at San Diego, California.



Dolores J. Ross

MAILING LIST

E. V. Anderson, District Administrator
Board of Equalizations
9823 Old Winery Place, Susite 1
Sacramento, CA 95823

Mr. James Apps (A-15)
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Paul Minney, Interested Party
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek CA 94596

Mr. Steve Smith, CEO, Interested Party
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Mr. David E. Wellhouse,
Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Donald W. Detisch
Detisch & Christensen
444 West "C" Street, #200
San Diego, CA 92101

