



June 20, 2017

Mr. David Burhenn
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Response to Claimant Question Regarding Whether the County Auditor-Controller May Act as Claimant and Certify a Test Claim for the San Bernardino County Flood Control District; and Notice of Extension Request Approval
Santa Ana Region Water Permit – County of San Bernardino, 10-TC-10
County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, Co-Claimants

Dear Mr. Burhenn:

Commission on State Mandates (Commission) staff has received your letter dated June 9, 2017 asking whether, despite the Commission's regulations which generally require the general manager of a special district to file a test claim on behalf of that district, and due to the provisions of the district's enabling statute, the county's auditor-controller may file the above described Test Claim on behalf of the San Bernardino County Flood Control District. This question raises an issue regarding the district's eligibility to file a test claim.

To be eligible to claim reimbursement for state mandated costs under the California Constitution, a claimant must be both: 1) a local agency; and 2) subject to the tax and spend limitations of articles XIII A and B of the California Constitution. It appears, though it is admittedly not crystal clear in this case, that the flood control district does not have an appropriations limit and may not have taxing authority. Rather, the district appears to be a component unit of the county, funded by the county. If this is the case, any state-mandated costs incurred by the district would in fact be costs of the county and therefore the county (but not the district directly) would be entitled to subvention for those costs. If, on the other hand, the district has proceeds of taxes and its own appropriations limit, it is eligible to claim reimbursement of any state-mandated costs for itself.

Therefore, please address in your filing whether the district is subject to the tax and spend limitations (i.e. can impose taxes and has an appropriation limit of its own) and thus is an eligible claimant, or whether the district is actually part of the county government and is funded by the county, and thus is not an eligible claimant itself. If the district is a part of the county and not subject to the taxing and spending limitations itself, and its costs are in fact paid by the county, the county can claim all of its costs alleged to be mandated by the state (including the district's costs) and one test claim should be filed on all of those county costs and the test claim form should be signed by the county auditor-controller. If, on the other hand, the district imposes taxes and has an appropriation limit of its own, please include that taxing authority and the district's appropriation limit during the fiscal years at issue in the Test Claim for the record and,

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based on the provisions of the San Bernardino County Flood Control Act, the county auditor-controller may act as claimant and certify the claim on behalf of the flood control district.

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

Article XIII B, section 6 requires reimbursement for increased costs mandated by the state. “Costs mandated by the state” is defined to mean “any increased costs which a local agency or school district is required to incur...as a result of any statute...or any executive order implementing any statute...which mandates a new program or higher level of service of an existing program.”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 above, the entity must also be subject to the tax and spend limitations of articles XIII A and XIII B. Section 6 was included in article XIII B in recognition that articles XIII A and XIII B of the Constitution severely restricted the taxing and spending powers of local governments.³ Article XIII B, section 6 provides in relevant part “[w]henver the Legislature ... mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service....” The Supreme Court recognized the purpose of article XIII B, section 6 was to protect local government from unfunded state mandates:

Specifically, [article XIII B, section 6] was designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ...local government for the costs of a state-mandated new program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention *only when the costs in question can be recovered solely from tax revenues.*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 Fourth District Court of Appeal concluded that

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

² Government Code section 17518 (Stats. 1984, ch. 1459).

³ *County of Fresno v. State of California* (1991), 53 Cal.3d 482, 487; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁴ *County of Fresno v. State of California* (1991), 53 Cal.3d 482, 487; See also, *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280, and Government Code section 17556(d).

⁵ *Redevelopment Agency of San Marcos v. Commission on State Mandates* (Cal. Ct. App. 4th Dist. 1997) 55 Cal.App.4th 976.

redevelopment agencies were not eligible to claim reimbursement because their funding came primarily from tax increment financing, which the court determined, due to a valid statutory exemption, was not subject to the taxing and spending limitations of articles XIII A and XIII B:

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

Therefore, a local agency that does not collect and expend "proceeds of taxes" is generally not an eligible claimant before the Commission.⁷

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

In addition, on June 9, 2017, the Commission received Claimants' second request for extension to respond to the Notice of Incomplete Joint Test Claim for the above-captioned Test Claim. Specifically, the request states that Claimants require an additional 17-day extension until July 7, 2017 because costs calculated for elements of the Test Claim were based on incorrect assumptions and must be recalculated (a process that cannot be completed by the current due date).

Section 1187.9(a) of the Commission's regulations provide that so long as a postponement of a hearing would not be required, there is no prejudice to any party or interested party, and there is no other good reason for denial, the request shall be approved.

Therefore, Claimants' response is now due **July 7, 2017**.

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

⁷ *Ibid.* See also, *County of Fresno, supra* (1991) 53 Cal.3d 482, at p. 487 ["[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues."].

⁸ California Constitution, article XIII B, section 9(c), which states: "'Appropriations subject to limitation' for each entity of government do not include: (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes."

Mr. Burhenn
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In addition to other matters pending before the Commission, this matter's tentative hearing date has been updated. This matter is now tentatively set for July 27, 2018.

Process for Filing Comments

All written representations of fact made to the Commission are required to be supported by documentary or testimonial evidence submitted under penalty of perjury. (Cal. Code Regs., tit. 2, 1187.5.)

The Commission's regulations require that written materials filed with the Commission be simultaneously served on all parties, interested parties, and interested persons on the mailing list, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, 1181.3) However, this requirement may be satisfied by electronically filing your documents via the Commission's e-filing system. Please see <https://www.csm.ca.gov/dropbox.php> on the Commission's website. The written material will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting. This procedure will satisfy all the service requirements pursuant to section 1181.3 of the Commission's regulations.

If you would like to request an extension of time, please refer to section 1187.9(a) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

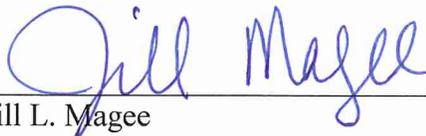
On June 20, 2017, I served the:

- **Response to Claimant Question Regarding Whether the County Auditor-Controller May Act as Claimant and Certify a Test Claim for the San Bernardino County Flood Control District; and Notice of Extension Request Approval issued June 20, 2017**
- **Claimants' Request for Extension filed June 15, 2017**
- **Claimants' Comments filed June 9, 2017**

Santa Ana Region Water Permit – County of San Bernardino, 10-TC-10
County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, Co-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 June 20, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

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Last Updated: 6/5/17

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Matter: Santa Ana Region Water Permit - County of San Bernardino

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City of Chino
City of Chino Hills
City of Colton
City of Fontana
City of Highland
City of Montclair
City of Ontario
City of Rancho Cucamonga
County of San Bernardino
San Bernardino County Flood Control District

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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