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October 17, 2014

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
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Re: Comments on Proposed Decision in Re: Test Claim No. 12-TC-01 (*Agricultural Water Measurement*), consolidated with Test Claim No. 10-TC-12 (*Water Conservation*)

Dear Ms. Halsey:

The California Special Districts Association, a California nonprofit public benefit corporation (hereinafter "CSDA") submits these public comments in support of the comments submitted by Claimants Biggs-West Gridley Water District, Glenn-Colusa Irrigation District, Oakdale Irrigation District, Paradise Irrigation District, Richvale Irrigation District and South Feather Water & Power Agency to the Draft Proposed Decision issued by the Commission on State Mandates in the matter July 31, 2014.

CSDA is a nonprofit association representing approximately 1,000 special districts throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including fire suppression and emergency medical services; water supply, treatment and distribution; sewage collection and treatment; recreation and parks; security and police protection; airport services; harbor and port services; solid waste collection, transfer, recycling and disposal; cemeteries; libraries; mosquito and vector control; road construction and maintenance; pest control and animal control services. California special districts routinely participate in the planning, design and construction of necessary public facilities and infrastructure and fund the provision of these critical public services. Special districts routinely fund the costs of such infrastructure and public services through the imposition of a combination of ad valorem property taxes, locally approved special taxes pursuant to Government Code section

50075 et seq., and property related fees and charges consisting of fees for water, sewer, garbage disposal and other property-related services and assessments pursuant to the provisions of Articles XIII C and D of the California Constitution (Prop. 218). Such special districts also expend costs to comply with state mandated programs from these revenue streams and file claims for reimbursement of such costs with the Commission.

The analysis and decision in this case will directly impact CSDA's special district members.

Respectfully submitted,

McMURCHIE LAW

By: _____
DAVID W. McMURCHIE,
Attorney for California Special
Districts Association

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INTRODUCTION

The Draft Proposed Decision states that only local government agencies which expend proceeds of taxes as defined by California Constitution Article XIII B are eligible to file reimbursement claims to recover costs expended by local governments in implementing state mandated local programs.

The California Special Districts Association ("CSDA") contends that the Proposed Decision fails to appropriately analyze the provisions of Article XIII B Section 6 regarding reimbursement of state mandates to local governments as amended by Proposition 1A in 2004, utilizing rules of constitutional construction required by the California Supreme Court. The Proposed Decision contains no such analysis but 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. This approach leads to a faulty constitutional analysis of the meaning of Article XIII B Section 6.

Such rules of constitutional construction emphasize ascertaining the intent of the voters who adopted the amendments to Article XIII B Section 6, ascertaining the plain words of the provision and giving meaning to each word within the constitutional provision, and harmonizing the provisions of Article XIII B Section 6 as amended with other sections of the Constitution which deal with similar issues of local government finance and the raising and expenditure of revenues by local governments. Utilizing these rules of construction specified in recent Supreme Court decisions in analyzing the provisions of Article XIII B Section 6 as amended by Proposition 1A leads to the conclusion that all mandated state programs for which financial responsibility is shifted from the state to local governments shall either be reimbursed or suspended, regardless of the source of revenue utilized by a local government to pay the costs of such mandated programs.

1. The Voter Intent in Adopting Proposition 1A Does Not Support Limiting Eligibility for Mandate Reimbursements to Only Those Local Governments Receiving and Expending Proceeds of Taxes.

The basic rules of constitutional interpretation have been recently described by the California Supreme Court in two unanimous decisions interpreting the provisions of Article XIII C and Article XIII D added to the Constitution by the passage of Proposition 218 in 1996. (*Bighorn Desert View Water Agency v. Verjil* 39 Cal.4th 205 (2006) and *Richmond v. Shasta Community Services District* 32 Cal.4th 409 (2004).) These two precedents are relevant to this inquiry since they constitute the definitive interpretation of Articles XIII C and XIII D which provisions are central to the mandate reimbursement issues in this case. As stated by the Supreme Court in both *Bighorn* and *Richmond*:

> "When interpreting a provision of our State Constitution, our aim is to determine and effectuate the intent of those who enacted the constitutional provision at issue. When, as here, the voters enacted the provision, their intent governs. To determine the voter's intent we begin

by examining the constitutional text, giving the words their ordinary meanings."

The Supreme Court added the following:

> "In construing a constitutional or statutory provision, if possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of a legislative purpose. (*DuBois v. Workers Compensation Appeals Board* (1993) 5 Cal.4th 382."

The plain words of the constitutional provisions added by Proposition 1A to Article XIII B Section 6 in 2004 are as follows:

> "(b)(1) … for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the state pursuant to law, the Legislature shall either appropriate in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law."
>
> "(b)(4) This subdivision applies to a mandate only as it applies to a city, county, city and county or special district."
>
> "(c) A mandated new program or higher level of service includes a transfer by the Legislature from the state to cities, counties, cities and counties or special districts of complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility."

Therefore, any appropriate constitutional analysis must give significance to the following phrases: (1) "the Legislature shall either **appropriate** the **full payable amount** that has not been previously paid or **suspend the operation of the mandate** … ; and (2) a mandated new program or higher level of service **includes** a **transfer** by the Legislature **from the state** to cities, **counties, cities and counties** or **special districts** of **complete or partial financial responsibility for a required program** for which the state previously had complete or partial financial responsibility."

Absent from this language is any mention of eligibility of local governments to claim mandate reimbursement based on whether such local government agencies receive and expend proceeds of taxes in complying with such mandated programs. Likewise, the mandate reimbursement implementation statutes at Government Code Section 17500 et seq., fail to mention any eligibility requirements for mandate reimbursement that require local agencies to receive proceeds of taxes and expend those proceeds of taxes in complying with state mandated programs as a precondition for receiving reimbursement for costs expended on state mandated programs. Section (b)(4) provides that the mandate reimbursement provisions apply to a city, county, city and county, or special district, but contains no additional qualifying language regarding the

requirement that such local government agencies receive and expend proceeds of taxes in paying state mandated program costs.

Rather, the plain language indicates that the mandate provisions are applicable to all cities, counties, cities and counties, and special districts without restriction. The plain language also mandates the state to appropriate the "full payable 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. In addition, the plain language is clear that if the Legislature fails to appropriate the "full payable amount" in the annual Budget Act, that the operation of the mandate shall be suspended for that fiscal year. Again, 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. In the absence of such limiting language, the holding of the Proposed Decision which limits eligibility for claiming reimbursement for costs expended on state mandated programs 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.

Voter intent in adopting a constitutional amendment can also be ascertained by an examination of the Legislative Analyst's Office summary of the provisions in the official ballot pamphlet. In the ballot pamphlet for the election at which Proposition 1A was adopted (which included these amendments to Article XIII B Section 6) the Legislative Analyst describes how Proposition 1A affects the mandate provisions originally enacted in 1978. (See *People v. Burkett* (1999) 21 Cal.4th 226 for the proposition that argument and analyses in official ballot pamphlet may be consulted to determine voter's understanding and intent.)

> "The State Constitution generally requires the state to reimburse local governments, school, and community college districts when the state "mandates" a new local program or higher level of service. For example, the state requires local agencies to post agendas for their hearings. As a mandate, the state must pay local governments, schools, and community college districts for their costs to post these agendas. Because of the state's budget difficulties, the state has not provided in recent years reimbursements for many mandated costs. Currently, the state owes these local agencies about $2 billion for the prior-year costs of state-mandated programs. In other cases, the state has "suspended" state mandates, eliminating both local government responsibility for complying with the mandate and the need for state reimbursements."

The Legislative Analyst also indicates in the ballot summary as follows:

> "The measure amends the State Constitution to require the state to suspend certain state laws creating mandates in any year that the state does not fully reimburse local governments for their costs to comply with the mandates. Specifically, beginning July 1, 2005, the measure requires the state to either fully fund each mandate affecting cities,

> counties, and special districts or suspend the mandate's requirements for the fiscal year."

Therefore, the Legislative Analyst appears to have read Article XIII B Section 6 as amended by Proposition 1A to require either fully funding each mandate in the fiscal year immediately following a determination that a program constitutes such a mandate, or suspending the mandate's requirements for that fiscal year. Again, the Legislative Analyst uses no words of limitation or restriction indicating that the reimbursement or suspension of mandates is only applicable with respect to mandated programs imposed on local governments that receive proceeds of taxes. The absence of such language of limitation implies that no such limitations were intended.

> "The measure also appears to **expand** the circumstances under which the state would be responsible for reimbursing cities, counties and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local governments financial responsibility for a required program for which the state previously had **complete or partial financial responsibility**. Under current law, some such transfers of financial responsibilities may not be a state mandate." [Emphasis added.]

The 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 complying with such mandates. Rather, the LAO analysis emphasizes that the amendments to Article XIII B Section 6 by Proposition 1A **expand** the circumstances under 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.

The Proposed Decision's interpretation of the language of Article XIII B Section 6 requiring that mandates, in order to be reimbursable, must be funded only by local governments which receive proceeds of taxes, and not other available revenue streams such as property related fees and charges, is not mentioned at all in the LAO analysis contained in the ballot pamphlet. Therefore, 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 in the Proposed Decision.

Nothing in the text of Article XIII B Section 6 as amended by Proposition 1A or in the ballot pamphlet for the 2004 General Election at which it was adopted suggests voter intent that mandate reimbursement and/or suspension be limited solely to those local government agencies which receive proceeds of taxes.

The LAO analysis of Proposition 1A indicates that the purpose of Proposition 1A was to amend the State Constitution to achieve three general objectives regarding state and local government finance. The first objective was to limit state authority to reduce major local tax

revenues in light of the state's historical shift of local property taxes to the state to fund costs of education pursuant to Proposition 98. The second purpose was to reduce state authority to reallocate tax revenues among local governments. The third objective was to restrict state authority to impose mandates on local governments without reimbursement. The ballot pamphlet specifically states that "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." Therefore, the general purpose was to keep local government revenues local, and to prevent the state from appropriating local revenues for state purposes, whether through tax shifts, or mandated state programs requiring local governments to fund state programs with local revenues without reimbursement. The 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.

Therefore, the voter intent in the Proposition 1A expansion of mandate reimbursement provisions does not support the limitations on mandate reimbursement eligibility specified in the Proposed Decision, which must therefore be found invalid as a matter of law.

2. The Provisions of Proposition 1A Regarding Mandate Reimbursements Must Be Harmonized With Other Constitutional Provisions Regarding Local Government Finance in Articles XIII C and D; Such Analysis Compels the Conclusion That Local Governments Receiving and Expending Property Related Fees and Charges on State Mandated Programs Are Eligible to Claim Mandate Reimbursement.

The Proposed Decision focuses on the impact of Articles XIII A and XIII B on state mandate determinations, but ignores the related constitutional provisions impacting and restricting local government finance contained at Articles XIII C and XIII D.

A common rule of statutory and constitutional construction provides that related provisions should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others. (See *City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462; *Cooley v. Superior Court* (2002) 29 Cal. 4th 228; *DeVita v. County of Napa* 9 Cal.4th 778.)

Therefore, the provisions of California Constitution Articles XIII A, B, C and D should be read together and harmonized with the provisions of Article XIII B Section 6. As the Proposed Decision points out, Articles XIII A and B deal with limitations on the ability of local governments to raise property tax revenue in Article XIII A, and impose restrictions on certain appropriations of the proceeds of taxes which are subject to limitation under Article XIII B. However, Articles XIII C and XIII D also impose significant and pervasive restrictions on the raising and expenditure of local government revenues including property related fees and charges, and assessments. The restrictions and limitations on the raising and expenditure of property related fees and charges and assessments impose more onerous restrictions on the ability of local governments to raise revenue for the purpose of paying the costs of state mandated programs than do the provisions of Article XIII A and XIII B of the Constitution upon which the Proposed Decision relies.

The appropriation limit in Article XIII B discussed in the Proposed Decision limits the ability of local governments to expend proceeds of taxes directly levied by the local government agency. Specifically, Article XIII B defines "appropriations subject to limitation" which are those expenditures of proceeds of taxes which are limited by the appropriations limit specified in Article XIII B. The Proposed Decision ignores the significant changes to the appropriations limit instituted by Proposition 111 in 1991. Article XIII B has always been construed as not limiting all appropriations or expenditures of local government, but only "appropriations subject to limitation" as defined by Article XIII B, and as expanded by the provisions of Proposition 111. Proposition 111 created a number of exemptions from the category of "appropriations subject to limitation." Among those exemptions from appropriations subject to limitation by Article XIII B created by Proposition 111 are the following: (1) debt service, which has been defined by the Legislative Counsel not only as "bonded indebtedness" but rather as "indebtedness" related to any legally binding obligation; and (2) any appropriations for capital expenditures were also exempted from "appropriations subject to limitation" by Proposition 111, including deposits of revenues into capital reserve funds for future capital outlay. These exemptions from "appropriations subject to limitation" under Article XIII B radically expand the category of local government expenditures which are **not** subject to the appropriations limit in Article XIII B.

The Proposed Decision places undue reliance on the appropriations limit in Articles XIII B which is limited in its effect after the amendments adopted by passage of Proposition 111 and totally ignores more restrictive provisions on the raising of and expenditure of property related fees and charges specified in Articles XIII C and D.

The Proposed Decision fails to recognize the significant limitations on the raising of property related fees and charges and assessments by local government agencies, and the expenditure of those revenues. Those limitations are as follows:

(1) Property related fees and charges for water, sewer and refuse collection services are subject to majority protest procedures by property owners even though they are not subject to election requirements; as are all other property related fees. (See *Howard Jarvis Taxpayers Association v. City of Roseville* (2002) 97 Cal.App.4th 637.)

(2) Property related fees may not be expended for general governmental services including but not limited to police, fire, ambulance, or library services which are available to the public at large in substantially the same manner as they are to property owners; and

(3) Revenues derived from the property related fee may not be used for any purpose other than that for which the fee was imposed; and

(4) Revenues derived from property related fees may not exceed the costs required to provide the property related service; and

(5) The amount of the property related fee may not exceed the proportional cost of providing the public service to each individual parcel subject to the fee.

Article XIII D includes similar provisions restricting the ability of local governments to raise and expend assessment revenue.

These constitutional restrictions severely impair the ability of local government agencies to utilize property related fees and charges to fund the costs of state mandated programs. First, property related fees and charges are subject to consent of either property owners or voters subject to payment of the fee either through a majority protest process or an election. Obviously the result of such a proceeding is out of the control of the local government agency imposing the property related fee. Second, to the extent that a state mandated program requires the provision of general governmental services over and above the specific utility services to be funded by the property related fee, a local government agency would not be able to expend its revenue from property related fees and charges on the costs of such a mandate without violating the provisions of Proposition 218. Furthermore, to the extent that the costs of the state mandated program are not a component of the property related service for which the fee is charged, a local government agency could not utilize such property related fee revenue to pay costs of implementing state mandated programs. Finally, to the extent that the costs of implementing a state mandated program exceed the proportional costs of a property related service attributable to each parcel paying that fee, such an expenditure of property related fees on a state mandated program would be constitutionally impermissible under Proposition 218 and Article XIII D. The Proposed Decision requires local governments to either violate Proposition 218 or fail to implement a state mandate if property owners fail to consent to an increase in a property related fee or charge. Proposition 1A cannot be interpreted to require local agencies to face such a Catch 22.

In addition to these restrictions imposed on raising and expenditure of property related fees by Article XIII D are the restrictions imposed on the ability of a local government to levy property related fees or assessments, imposed by Article XIII C. That provision expressly states that the initiative power cannot be limited or prohibited when an initiative proposes to reduce or repeal "any local tax, assessment, fee or charge." The Supreme Court construed Article XIII C and its effect on the ability of local governments to raise and expend property related charges in the *Bighorn* case, supra. The Supreme Court concluded that Article XIII C expressly authorizes initiative measures to reduce or repeal a public agency's property related fees and charges including water rates and other water delivery charges. This continuing threat of use of the initiative power to reduce or repeal property related fees and charges renders all such property related fees and charges contingent.

Analyzed 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. Those 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 Article XIII B. The Proposed Decision should be modified to recognize these restrictions imposed by Articles XIII C and D.

CONCLUSION

The mandate reimbursement obligation was placed in the Constitution to provide local government agencies with the assurance that state mandates would not place additional burdens on their "increasingly limited revenue resources." (See *California School Board Association v. State of California* 192 Cal.App.4th 770 (2011).) When Articles XIII A, XIII B, XIII C and XIII D are read together, it is clear that all severely restrict the revenue raising and spending powers of local governments. The purpose of Article XIII B Section 6 as amended by Proposition 1A remains the same, and that is to preclude the state from shifting partial or complete responsibility for carrying out state governmental functions to local governments which are ill-equipped to assume increased financial responsibilities because of the limitations that Articles XIII A, B, C and D impose on raising and expending taxes, property related fees and charges, and assessments. As stated in the *California School Board Association* case, if the state wants to require local government agencies to provide new programs or services, it is free to do so, but not by requiring local agencies to use their own revenues to pay for the programs. The fundamental purpose of Article XIII B Section 6, is to require each branch of government to live within its means, and to prohibit the entity having superior authority (the State) from circumventing this restriction by forcing local agencies to bear the state's costs, even for a limited time period.

The Commission should modify the Draft Proposed Decision to reflect voter intent in adopting Proposition 1A and recognize the restrictions on the powers of local government to raise and expend property related fees and charges, so that all cities, counties, and special districts are eligible for reimbursement of costs expended to implement state mandated programs.

Respectfully submitted,

McMURCHIE LAW

By:_____
DAVID W. McMURCHIE,
Attorney for California Special Districts Association

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 October 17, 2014, I served the:

CSDA Comments and Claimant Comments
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, Richvale Irrigation District, Biggs-West Gridley Water 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 October 17, 2014 at Sacramento, California.

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COMMISSION ON STATE MANDATES

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Last Updated: 9/25/14

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:

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