

ITEM 15
PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

Mineral Resource Policies
04-PGA-11 (CSM-4155)

Public Resources Code Section 2762
Statutes 1975, Chapter 1131

EXECUTIVE SUMMARY

Background

In 1985, the Commission on State Mandates determined that implementation of section 2726 of the Public Resources Code, as added by Statutes 1975, Chapter 1131, imposed a reimbursable state-mandated program by requiring local agencies to establish a mineral resource management policy in their general plan. The Commission adopted parameters and guidelines in 1986.

Statutes 1990, Chapter 1097 added new Section 2207 to the Public Resources Code. Subdivision (e) of section 2207 authorizes local agencies to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this mandate. For the past several years, no appropriations have been made for this program and it has been suspended in the annual budget acts pursuant to Government Code section 17581.

In Statutes 2004, Chapter 316, section 2 (AB 2851), the Legislature made the following finding and declaration regarding this program:

...[N]otwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for this program be amended to repeal the mandate program.¹

¹ Exhibit A.

Discussion

Upon written request of a local agency, school district, or the state, the Commission, after hearing, may amend, modify or supplement the parameters and guidelines. (Gov. Code, § 17557, subd. (c).)

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, two criteria must be met. First, the test claim legislation must impose costs mandated by the state.² Second, no statutory exceptions listed in section 17556 can apply. Section 17514 defines “cost mandated by the state” as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Section 17556, provides:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that . . . (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. . . .

The issue, therefore, is whether local agencies have the authority described in subdivision (d) of section 17556, “to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

In *Connell v. Superior Court of Sacramento County*,³ the court considered whether regulations that increased the purity of recycled water resulted in a reimbursable mandate. The *Connell* court found the fee authority is a question of law, so the evidence submitted regarding the fee’s economic feasibility or sufficiency was not relevant.⁴ The water districts’ possession of the fee authority was dispositive of the question of the existence of a reimbursable mandate. The court rejected the districts’ arguments that the fee would not be “sufficient to pay for the mandated costs” because it is unfeasible or economically undesirable for the districts to recover their costs.⁵ As the *Connell* court stated:

On appeal, appellants argue the sole inquiry is whether the local agency has “authority” to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. . . . [¶] . . . [¶] We agree with appellants.”⁶

² *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

³ *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382.

⁴ *Id.* at page 400.

⁵ *Id.* at page 399.

⁶ *Id.* at page 400.

The *Connell* court first explained the purpose of subvention. As the California Supreme Court stated regarding article XIII B, section 6 of the California Constitution, “Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues.”⁷ In upholding the constitutionality of the fee authority provision in section 17556, the Supreme Court stated that it “effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound.”⁸

The *Connell* court went on to interpret the plain meaning of “fee authority” in section 17556, subdivision (d) as the “right to exercise powers,” or the “power or right to give commands [or] take action ...”⁹ The court rejected interpreting the statute to mean “a practical ability in light of surrounding economic circumstances,” stating that if that had been the legislative intent, the Legislature would have used the term “reasonable ability” in the statute rather than “authority.”¹⁰

The *Connell* court also considered an argument that “fees levied by the districts ‘cannot exceed the cost to the local agency to provide such service,’ because such excessive fees would constitute a special tax.”¹¹ The court stated that no one is suggesting the districts levy fees that exceed their costs.

The reasoning of the *Connell* case applies to this program. Section 2207, subdivision (e) authorizes local entities to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with § 2719). Staff finds that the *Mineral Resource Policies* program (§ 2762) is within Chapter 9 of the Public Resources Code. Thus, staff finds that local entities have fee authority to cover the reasonable costs of the *Mineral Resource Policies* program.

Therefore, staff finds that Statutes 1975, Chapter 1131 does not constitute a reimbursable state mandated program under section 6 of Article XIII B of the California Constitution and section 17514 of the Government Code. The fee authority conferred by subdivision (e) of section 2207 of the Public Resources Code authorizes cities and counties to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the *Mineral Resource Policies* program. Thus, the Commission cannot find costs mandated by the state pursuant to Government Code section 17556, subdivision (d), and the *Connell* case.

Conclusion

Accordingly, staff concludes that the parameters and guidelines for this program should be set aside.

⁷ *Id.* at page 398, citing *County of Fresno v. State of California, supra*, 53 Cal.3d 482, 487.

⁸ *Ibid.*

⁹ *Id.* at page 401.

¹⁰ *Id.* at page 400-401.

¹¹ *Id.* at page 402.

Staff Recommendation

Staff recommends the Commission adopt the proposed Order to Set Aside the Parameters and Guidelines for the *Mineral Resource Policies* program.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Public Resources Code Section 2762

Statutes 1975, Chapter 1131

Filed on November 28, 1984 with the Board of Control;

By County of Placer, Claimant

Nos. 04-PGA-11 (CSM-4155)

Mineral Resource Policies

PROPOSED ORDER TO SET ASIDE
PARAMETERS AND GUIDELINES

(Proposed on July 28, 2005)

ORDER TO SET ASIDE PARAMETERS AND GUIDELINES

In 1985, the Commission on State Mandates determined that implementation of section 2726 of the Public Resources Code, as added by Statutes 1975, Chapter 1131, imposed a reimbursable stat mandated program by requiring local agencies to establish a mineral resource management policy in their general plan. The Commission adopted parameters and guidelines in 1986. On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for this program be amended to repeal the mandate program in accordance with Statutes 2004, chapter 316.

Statutes 1990, Chapter 1097 added new Section 2207 to the Public Resources Code. Subdivision (e) of section 2207 authorizes local agencies to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this mandate. For the past several years, no appropriations have been made for this program and it has been suspended in the annual budget acts pursuant to Government Code section 17581.

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for this program be amended to repeal the mandate program.¹²

Upon written request of a local agency, school district, or the state, the Commission, after hearing, may amend, modify or supplement the parameters and guidelines. (Gov. Code, § 17557, subd. (c).)

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, two criteria must be met. First, the test claim legislation must impose

¹² Exhibit A

costs mandated by the state.¹³ Second, no statutory exceptions listed in section 17556 can apply. Section 17514 defines “cost mandated by the state” as follows:

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The issue, therefore, is whether local agencies have the authority described in subdivision (d) of section 17556, “to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

In *Connell v. Superior Court of Sacramento County*,¹⁴ the court considered whether regulations that increased the purity of recycled water resulted in a reimbursable mandate. The *Connell* court found the fee authority is a question of law, so the evidence submitted regarding the fee’s economic feasibility or sufficiency was not relevant.¹⁵ The water districts’ possession of the fee authority was dispositive of the question of the existence of a reimbursable mandate. The court rejected the districts’ arguments that the fee would not be “sufficient to pay for the mandated costs” because it is unfeasible or economically undesirable for the districts to recover their costs.¹⁶ As the *Connell* court stated:

On appeal, appellants argue the sole inquiry is whether the local agency has “authority” to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. . . . [¶] . . . [¶] We agree with appellants.”¹⁷

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Section 2207, subdivision (e) authorizes local entities to impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with § 2719). The *Mineral Resource Policies* program (§ 2762) is within Chapter 9 of the Public Resources Code. Thus, the Commission finds that local entities have fee authority to cover the reasonable costs of the *Mineral Resource Policies* program.

Therefore, the Commission finds that Statutes 1975, Chapter 1131 does not constitute a reimbursable state mandated program under section 6 of Article XIII B of the California Constitution and section 17514 of the Government Code. The fee authority conferred by subdivision (e) of section 2207 of the Public Resources Code authorizes cities and counties to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the *Mineral Resource Policies* program. Thus, the Commission cannot find costs mandated by the state pursuant to Government Code section 17556, subdivision (d), and the *Connell* case.

In accordance with this finding, the Commission sets aside the attached parameters and guidelines for the *Mineral Resource Policies* program.

Paula Higashi, Executive Director

Date

Attachment: Parameters and Guidelines

¹⁹ *Ibid.*

²⁰ *Id.* at page 401.

²¹ *Id.* at page 400-401.

²² *Id.* at page 402.