

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

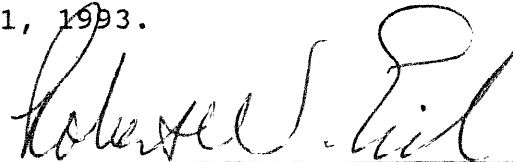
Claim of:)
)
)
County of San Bernardino,) No. CSM-4420
) Food and Agriculture Code
) Section I.2979
) Chapter 1200, Statutes of
) 1989
Claimant) Pesticide Use Reports
)
)

DECISI-ON

The attached Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on January 21, 1993.

IT IS SO ORDERED January 21, 1993.



Robert W. Eich, Executive Director
Commission on State Mandates

1 BEFORE THE
2 COMMISSION ON STATE MANDATES
3 STATE OF CALIFORNIA
4

5)
6 Claim of:)

7 County of San Bernardino,)

8 Claimant)
9)
10)
11)
12)

No. CSM-4420
Food and Agriculture Code
Section 12979
Chapter 1200, Statutes of 1989
Pesticide Use Reports

13 STATEMENT OF DECISION
14

15 This claim was heard by the Commission on State Mandates
16 (Commission) on November 19, 1992, in Sacramento, California,
17 during a regularly scheduled hearing.
18

19 ms* Marcia Faulkner, Mr. John Gardener and Mr. Allan Burdick
20 appeared on behalf of the County of San Bernardino. Mr. James Apps
21 appeared on behalf of the State Department of Finance. Ms. Sharon
22 Dobbins, and Mr. Doug Okumura appeared on behalf of the State
23 Department of Pesticide Regulation.
24

25 Evidence both oral and documentary having been introduced, the
26 matter submitted, and vote taken, the Commission finds:

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ISSUES

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2
3 Da Food and Agriculture Code section 12979, as added by
4 Chapter 1200, Statutes of 1989 (Chapter 1200/89), and its
5 implementing regulations in Title 3 of the California Code of
6 Regulations, require local agencies to implement a new program or
7 provide a higher level of service in an existing program, within
8 the meaning of Government Code section 17514, and section 6 of
9 **article XIII B** of the California Constitution?

10
11 If so, are **local** agencies entitled to reimbursement under the
12 provisions of section 6 of article XIII B?

BACKGROUND AND FINDINGS OF FACT

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14
15
16 The test claim was filed with the Commission on December 20, 1991,
17 by the County of San Bernardino (claimant).

18
19 The elements for filing a test claim, as specified in section 1183
20 of Title 2 of the California Code of Regulations, were satisfied.

21
22 Chapter 1200/89 added section 12979 to the Food and Agriculture
23 Code to require the following:

24
25 "A pesticide use report shall be submitted to the
26 commissioner or director on a form and in a manner
27 prescribed by the director. The data from the pesticide
28 use reports shall be considered in setting priorities for

1 food monitoring, pesticide use enforcement, farm worker
2 safety programs, environmental monitoring, pest control
3 research, public health monitoring and research, and
4 similar activities by the department, or by the
5 department in cooperation with other state, regional, or
6 local agencies with appropriate authority."

7
8 The claimant stated that the addition of Food and Agriculture Code
9 section 12979, and its implementing regulations in Title 3 of the
10 California Code of Regulations, results in a greatly expanded
11 number of reports received by the county agricultural commissioner
12 from the users of pesticides, and has increased the monitoring
13 responsibilities as specified by the State Department of Pesticide
14 Regulation. The reporting requirements require the **county**
15 agricultural staff to perform reporting and monitoring activities
16 at a higher service level, in addition to completely new activities
17 not previously required.

18
19 The Department of Pesticide Regulation stated that prior to the
20 enactment of section 12979, the **state's** pesticide program only
21 required that (1) holders of use permits for restricted pesticide
22 materials, and (2) agricultural pest control operators, to submit
23 pesticide use reports to the county agricultural commissioner or
24 the director of the Department of Food and Agriculture. In
25 addition, the holder of the restricted materials permit did not
26 have to submit a pesticide use report if the material was applied
27 by a agricultural pest control operator and included in the
28 operator's report.

1 The Department of Pesticide Regulation stated that with the
2 enactment of section 12979, the state adopted a new pesticide
3 program which requires that all agricultural pesticide use be
4 reported monthly to the county agricultural commissioner, who, in
5 turn, reports the data to the Department of Pesticide Regulation.
6 The Department of Pesticide Regulation stated that the new
7 regulatory program under Food and Agriculture Code section 12979
8 results a higher level of service in an existing program.

9
10 The Commission acknowledged that under the old regulatory program
11 (Title 3, California Code of Regulations, section 6440), only two
12 classes of individuals, i.e., holders of restricted materials
13 permits, and agricultural pest control operators, were required to
14 submit use reports. However, the Commission observed that the
15 regulatory program established under Food and Agriculture Code
16 section 12979 expands the number of people who must now maintain
17 pesticide use records and submit monthly reports to the county
18 agricultural commissioner, who, in turn, report the data to the
19 Department of Pesticide Regulation. (Title 3, California Code of
20 Regulations, section 6624 through 6627)

21
22 Thus, the Commission found that the provisions of Food and
23 Agriculture section 12979, and its related regulations in Title 3
24 of the California Code of Regulations, increased the level of
25 service to be provided by the county agricultural commissioners.

26
27 However, the Department of Finance, and the Department of Pesticide
28 Regulation, noted that Chapter 1200/89 created the Food Safety

Account, as well as increased the mill assessment from .008 mills per dollar to .009 mills per dollar, to fund the pesticide program created by that legislation.

Food and Agriculture Code section 12846, as added by Chapter 1200/89, provides:

"The Food Safety Account is hereby created in the Department of Food and Agriculture Fund to be used, upon appropriation, for the purposes of Sections 12535, 12797, 12798, 12979, 13060, and 13062 of this code, and Section 26509 of the Health and Safety Code." (emphasis added)

With respect to the mill assessment increase, the Department of Pesticide Regulation stated that as a result of the .001 mill assessment increase, section 6393, subdivision fc), of Title 3, California Code of Regulations, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

Government Code section 17556, subdivision (e), provides:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim

1 submitted by a local agency or school district, if, after
2 a hearing, the commission finds:

3
4 "

6 "(e) The statute or executive order provides for
7 offsetting savings to local agencies or school districts
8 which result in no net costs to the local agencies or
9 school districts, or includes additional revenue that was
10 specifically intended to fund the costs of the state
11 mandate in an amount sufficient to fund the cost of the
12 state mandate."

13
14 Based on the provisions of Government Code section 17556,
15 subdivision (e), the Department of Finance, and the Department of
16 Pesticide Regulation, stated that Food and Agriculture Code
17 section 12979, and its implementing regulations in Title 3 of the
18 California Code of Regulations, do not result in "costs mandated by
19 the state" as defined by Government Code section 17514.

20
21 The claimant acknowledged that it currently has a memorandum of
22 understanding with the Department of Pesticide Regulation, and
23 thereby receives state funds for the increased reporting
24 requirements. However, the claimant also alleged that the current
25 funding is insufficient. Thus, the claimant further alleged that
26 the unreimbursed costs it has incurred are "costs mandated by the
27 state" as defined by Government Code section 17514.

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1 The Commission recognized that Chapter 1200/89 created the Food
2 Safety Account in section 12846 of the Food and Agriculture Code
3 and amended Food and Agriculture Code section 12841, to change the
4 pesticide mill assessment from .008 mills per dollar to .009 mills
5 per dollar. Moreover, the Commission found that the reason for
6 creating the Food Safety Account and increasing the mill assessment
7 was to provide funding for the new pesticide program contained in
8 Chapter 1200/89, part of which pertains to the pesticide use
9 reports that are the subject of this claim,

10
11 The Commission found that to the extent that costs incurred by the
12 claimant are reimbursed by the Food Safety Account and the
13 increased mill assessment, Government Code section 17556,
14 subdivision (e), precludes such costs from being costs mandated by
15 the state, as defined in Government Code section 17514.

16
17 The Commission further found that any costs incurred as a result of
18 the increased pesticide reporting requirements, that are not
19 reimbursed by the Food Safety- Account, and the increased mill
20 assessment, are costs mandated by the state, as defined in
21 Government Code section 17514, and are not subject to the
22 provisions of Government Code section 17556, subdivision (e).

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1 APPLICABLE LAW RELEVANT TO THE DETERMINATION
2 OF A REIMBURSABLE STATE MANDATED PROGRAM

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4 Government Code section 17500 and following, and section 6,
5 article XIIIIB of the California Constitution and related case law.

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7
8 CONCLUSION

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10 The Commission determines that it has the authority to decide this
11 claim under the provisions of Government Code sections 17500
12 and 17551, subdivision (a) .

13
14 The Commission concludes that Food and Agriculture Code
15 section 12979, and its implementing regulations in Title 3 of the
16 California Code of Regulations, require counties to implement a new
17 program or higher level of service in an existing program, **within**
18 the meaning of Government Code section 17514 and section 6,
19 article XIIIJB of the California Constitution.

20
21 Accordingly, such costs related to Food and Agriculture Code
22 section 12979, and its implementing regulations in Title 3 of the
23 California Code of Regulations, that are not otherwise reimbursed
24 by the Food Safety Account and increased mill assessment, are costs
25 mandated by the state and are subject to reimbursement within the
26 meaning of section 6, article XIIIIB of the California Constitution.

27 Therefore, the claimant is directed to submit parameters and
28 guidelines, pursuant to Government Code section 17557 and Title 2,

1 California Code of Regulations, section 1183.1, to the Commission
2 for its consideration.

3

4 The foregoing determination is subject to the following conditions:

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6 The determination of a reimbursable state mandated
7 program does not mean that all increased costs claimed
8 will be reimbursed. Reimbursement, if any, is subject to
9 Commission approval of parameters and guidelines for
10 reimbursement of the mandated program; approval of a
11 statewide cost estimate; a specific legislative
12 appropriation for such purpose; a timely-filed claim for
13 reimbursement; and subsequent review of the claim by the
14 State **Controller's** Office,

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