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February 16, 2024



VIA CSM DROPBOX

Heather Halsey
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Re: SAN DIEGO UNIFIED PORT DISTRICT AND SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY COMMENTS ON DRAFT
PROPOSED DECISION AND PARAMETERS AND GUIDELINES,
TEST CLAIM 07-TC-09-R

Dear Ms. Halsey:

The San Diego County Regional Airport Authority (“Airport Authority”) and the San Diego Unified Port District (“Port District”) (collectively, “Special Districts”) submit these comments in response to the Draft Proposed Decision and Parameters and Guidelines for Test Claim 07-TC-09-R (“Proposed Decision”). We appreciate the work that the Commission on State Mandates (“Commission”) has invested in the Proposed Decision, and submit these comments to urge a revision to the Proposed Decision that recognizes the Special Districts as eligible claimants under Test Claim 07-TC-09 (“Test Claim”).

BACKGROUND

The Port District was created by the State of California and approved by voters in Chula Vista, Coronado, Imperial Beach, National City and San Diego in 1962 to manage the tidelands and submerged lands of San Diego Bay.¹ The Port District is governed by the applicable Harbors & Navigation Codes Sections and Appendixes. The Airport Authority was created on January 1, 2003, as an independent agency to manage the day-to-day operations of San Diego International Airport (“SAN”) and address the region’s long-term air transportation needs.² The Airport Authority is governed by the applicable Public Utilities Code Sections.

Both Special Districts have and maintain stormwater systems. The Special Districts’ storm drain systems collect surface and storm waters on their own properties and discharge that water offsite. Parts of the stormwater systems of the Special Districts’ interconnect with other public stormwater systems.

¹ Harbors and Nv. Code, appx. I.

² Pub. Util. Code, div. 17.

The Special Districts were both subject to R9-2007-001, National Pollutant Discharge Elimination System (“NPDES”) No. CAS0108758 (“Permit”) along with the County of San Diego and the Incorporated Cities of San Diego (“Municipal Claimants”). This Permit required both the Municipal Claimants and the Special Districts to perform certain activities which were completed by both the Municipal Claimants and the Special Districts. Since both the Municipal Claimants and the Special District had to perform these mandated activities, both groups are eligible claimants.

DISCUSSION

The Special Districts respectfully requests reconsideration of the Proposed Decision with respect to the decision to not include the Special Districts as eligible claimants under the Test Claim. The Special Districts believe that they should be entitled to reimbursement under Section 6 of Article XIII B of the California Constitution (“Section 6”) because the plain language of Section 8 of Article XIII B of the California Constitution (“Section 8”) demonstrates that the Special Districts are eligible claimants. Additionally, the Proposed Decision should be revised because it improperly disqualifies the Special Districts by relying on a defined term that is not used in Section 6 and misstates the taxing authority of the Airport Authority. Lastly, equity requires that the Special Districts be treated the same as the Municipal Claimants.

I. Reimbursement Under Section 6 is Proper Because the Special Districts Are Local Governments Under Section 8

The Special Districts are eligible claimants under the Test Claim because Section 8 applies to local governments and the Special Districts are “local governments” as defined by Article XIII B of the California Constitution.³ Section 6 mandates reimbursement “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government.” Section 8(d) defines “local government” as “any city, county, city and county, school district, *special district, authority*, or other political subdivision of or within the State.” (Emphasis added.) The plain language of this definition thus expressly includes “special districts” and “authorities” such as the Special Districts. Since the Special Districts are included in Section 6 through Section 8(d), they are eligible claimants as a matter of law.

Including the Special Districts as eligible claimants makes sense because the purpose of Section 6 is to protect local revenues after Proposition 13 “severely restricted the taxing powers of local governments.”⁴ These severe restrictions include both expenditure limits *and* voter approval of taxes.⁵ As such, recovery under Section 6 is proper where the costs can only be recovered through tax revenue.⁶

³ Cal. Const. art. XIII B, § 8.

⁴ *County of Fresno v. State* (1991) 53 Cal.3d 482, 487; *see also County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 210.

⁵ *County of Fresno*, *supra*, 53 Cal.3d at p. 487.

⁶ *City of El Monte v. Comm'n on State Mandates*, 83 Cal. App. 4th 266, 280, (2000), holding modified by *Dep't of Fin. v. Comm'n on State Mandates*, 122 Cal. Rptr. 2d 447 (Ct. App. 2002).

Here, recovery under Section 6 should be granted because the Special Districts are subject to severe voter approval restrictions on taxing just like the municipal claimants.⁷ Before the Port District can collect a special tax to pay for stormwater drainage services, it must obtain voter approval.⁸ Similarly, the Airport Authority must obtain voter approval before levying a charge for stormwater services.⁹ As such, the Special Districts should be able to recover under Section 6 because they can only recover for the stormwater mandates from taxation.

II. The Proposed Decision Improperly Disqualifies the Special Districts

The Proposed Decision relies on two arguments to disqualify the Special Districts. The first is that there is a taxation requirement necessary to count as a local government under Section 6. The second is that the Airport is unable to tax and therefore cannot be a local government under Section 6.¹⁰ Both are incorrect.

A. The Taxation Requirements in the Section 7901 Definition of “Local Agency” Do Not Apply to Section 6

The Proposed Decision relies on the definition of “local agency” in Government Code section 7901 (“Section 7901”) to determine that the Special Districts are not eligible claimants for reimbursement under Section 6 of Article XIII B of the California Constitution (“Section 6”). Section 7901 defines “local agency” as a special district, except, in part, special districts that are totally funded by revenues other than the proceeds of taxes as defined in [Section 8(c)].”

As stated above, Section 6 applies to local governments. Section 8, which defines “local government”, does not include any limitations relating to taxing authority or require that taxes

⁷ See Cal. Const. art. XIII C, subd. (e). Such revenues must:

- Be imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged and not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege;
- Be imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and not exceed the reasonable costs to the local government of providing the service or product;
- Be imposed for the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof;
- Be imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property;
- Be a fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law;
- Be an assessment or property-related fee regulated by Proposition 218.
- Be a charge imposed as a condition of property development.

⁸ See, e.g., Harb. & Nav. App. 1, § 61, subd. (a) (authorizing special taxes).

⁹ Pub. Util. Code, § 170072 (authorizing “special benefit assessments consistent with the requirements of Article XIII B of the California Constitution”).

¹⁰ Cf Proposed Decision, § IV.A “The San Diego County Regional Airport Authority was formed in 2001 pursuant to the Public Utilities Code, Division 17, commencing with section 170000, which does not permit the Authority to levy taxes.”

actually be imposed in order to qualify as a “local government.” The more specific definition of “local government” contained in Section 8 must govern the interpretation of eligibility under Section 6. For this reason, it is improper to disqualify the Special Districts as “local governments” under Section 6 on the basis that they do not levy taxes under Section 7901.

Additionally, the term defined in Section 7901, “local agency” is not used in Section 6. The definition of “local agency” in Section 7901 is inapplicable to Section 6. For this reason, it is improper to disqualify the Special Districts as “local governments” under Section 6 on the basis that they do not levy taxes.

Even if the term “local agency” was included in Section 6, the definition in Section 7901 would not apply. Because specific provisions of a law govern over general provisions,¹¹ the definitions in Section 7901, which were enacted for the general “effective and efficient implementation of Article XIII B”, cannot prevail over the definitions in Government Code section 17518 (“Section 17518”), which was enacted specifically “to provide for the implementation of Section 6[.]”¹² Section 17518 defines “local agency” as “any city, county, special district, authority, or other political subdivision of the state.” This definition is consistent with the definition in Section 8. For the specific purpose of interpreting Section 6, a local government or local agency includes any special district or authority, without any qualification regarding the collection of tax revenues. For this additional reason, it is improper to disqualify the Special Districts as “local governments” under Section 6 on the basis that they do not levy taxes.

The purpose of Article XIII B to protect local voters from tax increases made necessary by unfunded state mandates will be undermined if local agencies which have been able to fund their services without taxes lose that ability due to unfunded mandates.

B. The Airport Authority has the Power to Levy Taxes

Even if there was some taxing authority required to qualify under Section 6, the Airport would satisfy this requirement. Public Utilities Code section § 17000.72 explicitly authorizes the Airport Authority to levy special benefit assessments as long as they are consistent with the requirements of Article XIII D of the California Constitution and, although assessments are distinct from taxes, both are relevant to the purpose of Article XIII B to protect local property owners from funding unfunded state mandates. Article XIII D requires voter approval for stormwater system fees. Therefore, the Airport Authority should receive reimbursement under Section 6.¹³

¹¹ *Rose v. State* (1942) 19 Cal.2d 713, 724 (“A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.”)

¹² Gov. Code, § 17500.

¹³ *Compare* Public Utilities Code §17002 to *City of El Monte v. Comm'n on State Mandates*, 83 Cal. App. 4th 266, 280, (2000), holding modified by *Dep't of Fin. v. Comm'n on State Mandates*, 122 Cal. Rptr. 2d 447 (Ct. App. 2002)

III. Equity Requires the Special Districts to Receive the Same Reimbursement as the Municipal Claimants Under Section 6

Equity doctrines are generally intended to uphold “some minimum standard of decency, honor, and reliability in their dealings with their Government.”¹⁴ As such, fairness requires that the Special Districts be eligible to receive reimbursements for the stormwater mandates.

First, Special Districts, like the Municipal Claimants, are obligated to take actions on and off their own properties to fulfill the mandated activities in the Permit. Since the Special Districts must perform the same mandated activities as eligible claimants, they should in fairness be eligible claimants.

Second, the Special Districts had no means, without voter approval, to charge a tax or fee to recoup these costs. Equity requires the Special Districts to be treated in the same manner as the Municipal Claimants.

CONCLUSION

For the foregoing reasons, the Special Districts respectfully request to be considered as eligible claimants as the Special Districts are subject to the same mandates as the Municipal Claimants. The Special Districts are eligible claimants because they are “local governments” and the applicable definition of local government includes no requirement that the entity actually impose a tax. Additionally, the Special Districts are subject to severe taxing limits just like the Municipal Claimants. Further, the Proposed Decision misstates the Airport Authority’s ability to generate revenues without voter approval.

As a result, the Special Districts are eligible claimants and should be authorized to submit reimbursement claims.

Pursuant to Title 2, Section 1183.8 and Section 1183.3 of the California Code of Regulations, I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information, or belief, and that this declaration is executed on this 16th day of February, 2024, in San Diego, California.

Sincerely,



Shawn D. Hagerty
of BEST BEST & KRIEGER LLP

SDH:sr

¹⁴ *Heckler v. Cmty. Health Servs.*, 467 U.S. 51, 60-61 (1984).

CERTIFICATE OF SERVICE

Pursuant to section 1181.3(a)(1)(D), the Commission will serve all e-filed documents, including SAN DIEGO UNIFIED PORT DISTRICT AND SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY COMMENTS ON DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES, TEST CLAIM 07-TC-09-R on those persons on the following mailing list for Test Claim 07-TC-09-R who have provided an email address

Executed on February 16, 2024, at Downey, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/3/23

Claim Number: 07-TC-09-R

Matter: San Diego Regional Water Quality Control Board Order No. R9-2007-0001
Permit CAS0108758 Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f,
E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L.

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City of Chula Vista
City of Del Mar
City of Encinitas
City of Escondido
City of Imperial Beach
City of La Mesa
City of Lemon Grove
City of National City
City of Oceanside
City of Poway
City of San Diego
City of San Marcos
City of Santee
City of Solana Beach
City of Vista

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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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.

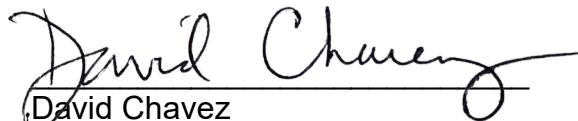
On February 16, 2024, I served the:

- **Current Mailing List dated January 19, 2024**
- **Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines filed February 16, 2024**

San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R County of San Diego, Cites of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, San Diego, and Vista, 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 February 16, 2024 at Sacramento, California.



David Chavez
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/24

**Claim
Number:** 07-TC-09-R

Matter: San Diego Regional Water Quality Control Board Order No. R9-2007-0001 Permit CAS0108758 Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L.

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City of Chula Vista
City of Del Mar
City of Encinitas
City of Escondido
City of Imperial Beach
City of La Mesa
City of Lemon Grove
City of National City
City of Oceanside
City of Poway
City of San Diego
City of San Marcos
City of Santee
City of Solana Beach
City of Vista

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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