BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Water Quality Certification for Federal Permit or License, Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, Federal Energy Regulatory Commission Project Nos. 2299 and 14581, Condition 12, Riparian, Spawning, and Floodplain Management, Adopted by the State Water Resources Control Board on January 15, 2021. Filed on January 14, 2022 Turlock Irrigation District and Modesto Irrigation District, Claimants	Case No.: 21-TC-02 *Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric and La Grange Hydroelectric Project* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLES 3 AND 7, SPECIFICALLY SECTIONS 1183.1 AND SECTION 1187.14. (*Adopted July 22, 2022*) (*Served July 26, 2022*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on July 22, 2022.

Heather Halsey, Executive Director

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IN RE TEST CLAIM Water Quality Certification for Federal Permit or License, Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, Federal Energy Regulatory Commission Project Nos. 2299 and 14581, Condition 12, Riparian, Spawning, and Floodplain Management, Adopted by the State Water Resources Control Board on January 15, 2021. Filed on January 14, 2022 Turlock Irrigation District and Modesto Irrigation District, Claimants	Case No.: 21-TC-02 *Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric and La Grange Hydroelectric Project* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLES 3 AND 7, SPECIFICALLY SECTIONS 1183.1 AND 1187.14. (*Adopted July 22, 2022*) (*Served July 26, 2022*)

DECISION TO DISMISS

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 22, 2022. Peter Prows, Tony Francois, and Jesse Kirschner appeared on behalf of the claimants. State agency representatives did not appear.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to Dismiss the Test Claim by a vote of 6-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Absent
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This Test Claim is dismissed pursuant to California Code of Regulations, title 2, sections 1183.1(g) and 1187.14, on the ground that Turlock Irrigation District and Modesto Irrigation District (claimants) are not subject to the taxing and spending limitations of article XIII A and B of the California Constitution, and are therefore not eligible to claim reimbursement under article XIII B, section 6.

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. The purpose is to prevent "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill-equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[1]

Article XIII B does not reach beyond taxation and does not restrict the growth in appropriations financed from nontax sources, such as bond funds, user fees based on reasonable costs, or revenues from local assessments, fees, and charges.[2] Local agencies funded by revenues other than "proceeds of taxes" cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[3] Therefore, the Commission's regulations make it clear that a test claim filed by local agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution shall be proposed for dismissal.[4]

The claimant Districts were established in 1887 and are currently governed by Division 11 of the Water Code (The Irrigation District Law, codified at Water Code sections 20500 et seq.). The Irrigation District Law was enacted in 1943 and authorizes irrigation districts to levy annual

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[1] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763, quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185, holding that reimbursement under article XIII B, section 6 is only required when a mandated new program or higher level of service forces local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."

[2] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; and *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451, finding that revenues from a local special assessment for the construction of public improvements are not "proceeds of taxes" subject to the appropriations limit.)

[3] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

[4] California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

assessments;[5] issue bonds;[6] charge fees or tolls for specified services, such as water and electricity;[7] and (as of 1991) levy special taxes for specific purposes in accordance with article XIII A of the California Constitution, which must be approved by a two-thirds vote of the local electors.[8] But the Irrigation District Law, as enacted in 1943[9] and as it currently exists, does not authorize irrigation districts to levy property taxes or other taxes that raise general revenues. In addition, published court cases dating back to 1895 discuss the authority of irrigation districts to impose charges, fees, and assessments, but not taxes.[10]

Moreover, there is no evidence in the record that the claimants ever collected property taxes, special taxes, or other "proceeds of taxes." Although the 2020 and 2019 Turlock Irrigation District Financial Audit mentions "TID levies ad valorem property taxes on property located in the counties of Stanislaus and Merced,"[11] the law does not authorize the District to levy property taxes. And Turlock Irrigation District's budget documents show that it is fully funded with bond revenue, assessments, fees and charges, which are *not* "proceeds of taxes" subject to the appropriations limit of article XIII B.[12]

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[5] Water Code sections 25650 et seq., added by Statutes 1943, chapter 372.

[6] Water Code sections 24950 et seq., added by Statutes 1943, chapter 372.

[7] Water Code sections 22280 et seq., added by Statutes 1943, chapter 372.

[8] Water Code section 22078.5 (Stats. 1991, ch. 70), which is in Article 1, states: "A district may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, except that unimproved property may be taxed at a lower rate than improved property."

Government Code section 50075 states: "It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."

[9] Exhibit G (1), 1943 Irrigation District Act (Stats. 1943, chs. 368, 372).

[10] *City of San Diego v. Linda Vista Irrigation Dist.* (1895) 108 Cal.189, 192-193; *Mitchell v. Patterson* (1898) 120 Cal.286, 288-289; *Bolton v. Terra Bella Irr. Dist.* (1930) 106 Cal.App. 313, 317; *Thompson v. Board of Directors of Turlock Irrigation Dist.* (1967) 247 Cal.App.2d 587, 593; see also, 84 Opinions of the California Attorney General 81 (Cal.A.G.), 2001.

[11] Exhibit G (17), Turlock Irrigation District Report of Independent Auditors 2020 2019, https://issuu.com/turlockirrigationdistrict/docs/tid_final_fs?fr=sYzNhZTE5NTkxNTU (accessed April 20, 2022), page 14.

[12] Exhibit G (14), Turlock Irrigation District 2019 Proposed Operations and Capital Budget, https://www.tid.org/download/2019-budget/ (accessed on April 20, 2022), page 1; Exhibit G (16) Turlock Irrigation District 2022 Budget, https://www.tid.org/download/current-tid-budget/ (accessed on April 20, 2022), page 3; Exhibit G (6) Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 Years of the Modesto Irrigation District*, chapter 4, https://www.mid.org/about/history/chpt_14.html (accessed on April 20, 2022); and Exhibit G (5)

Similarly, although the Modesto Irrigation District's website mentions an "irrigation tax" that was last imposed in 1959,[13] the Irrigation District Law did not provide the authority to levy property taxes. The claimants only had the authority to levy an assessment on the property, and other fees and charges.[14] In addition, Modesto Irrigation District's budget for 2018 through 2021 shows water revenues, electric revenues, and other revenues, but no tax revenues - and no appropriations limit is identified.[15] Moreover, Modesto Irrigation District's website states: "Today the district remains tax free, although in 1976 an irrigation water user charge was adopted."[16]

Therefore, the claimants are not eligible to claim reimbursement under article XIII B, section 6. Accordingly, this Test Claim is dismissed.

COMMISSION FINDINGS

I. Chronology

01/15/2021	Water Quality Certification for Federal Permit or License, Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, Federal Energy Regulatory Commission Project Nos. 2299 and 14581, Condition 12, Riparian, Spawning, and Floodplain Management was adopted by the State Water Resources Control Board.
01/14/2022	The Turlock Irrigation District and Modesto Irrigation District filed the Test Claim.[17]

Modesto Irrigation District 2020 Detailed Budget, https://www.mid.org/about/budget/documents/2020Budget.pdf (accessed April 20, 2022), page 3.

[13] Exhibit G (6), Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 Years of the Modesto Irrigation District*, chapter 4, https://www.mid.org/about/history/chpt_04.html (accessed on April 20, 2022).

[14] Exhibit G (1), 1943 Irrigation District Act (Stats. 1943, chs. 368, 372).

[15] Exhibit G (5), Modesto Irrigation District 2020 Detailed Budget, https://www.mid.org/about/budget/documents/2020Budget.pdf (accessed on April 20, 2022), page 3.

[16] Exhibit G (6), Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 Years of the Modesto Irrigation District*, page 2, https://www.mid.org/about/history/chpt_04.html (accessed on April 20, 2022).

[17] Exhibit A, Test Claim, filed January 14, 2022.

02/22/2022	Commission staff issued the Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim due to lack of Commission jurisdiction.[18]
04/18/2022	The claimants filed comments on the Notice of Proposed Dismissal of Test Claim.[19]
05/12/2022	The claimants filed additional documentation.[20]
05/13/2022	Commission staff issued the Proposed Decision to Dismiss Test Claim for the May 27, 2022 Commission meeting.[21]
05/20/2022	Claimants filed late comments.[22]
05/23/2022	Commission staff issued a Notice of Postponement of Hearing, setting the matter for the July 22, 2022 Commission meeting.[23]

II. Background

The claimants filed applications requesting water quality certification under section 401 of the Federal Clean Water Act to continue to operate and maintain the Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, both located on the Tuolumne River.[24] The projects generate hydroelectric power and provide flood control and water supply for more than 200,000 acres of farmland, plus municipal and industrial uses, including water supply for the cities of Modesto and Turlock.[25] On January 15, 2021, the request was conditionally approved by the State Water Resources Control Board, provided the Districts comply with 45 conditions and "upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28," as follows: "The State Water Board finds that, with the conditions and limitations imposed under this certification, the Projects will comply with applicable state water

[18] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022.

[19] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022.

[20] Exhibit D, Claimants' Late Comments on the Notice of Proposed Dismissal of Test Claim, filed May 12, 2022.

[21] Exhibit E, Proposed Decision to Dismiss Test Claim issued May 13, 2022.

[22] Exhibit F, Claimants' Late Comments, filed May 20, 2022.

[23] The matter was originally set for the May 27, 2022 Commission meeting, but was postponed to July 22, 2022 due to staff unavailability.

[24] Exhibit A, Test Claim, filed January 14, 2022.

[25] Exhibit A, Test Claim, filed January 14, 2022, pages 14-15.

quality standards and other appropriate requirements of state law."[26] The claimants seek reimbursement for Condition 12, which allegedly requires them to do the following:

> Condition 12 is the mandate ("Mandate") at issue. It "requires the development and implementation of a Riparian, Spawning, and Floodplain Restoration Plan". (Order at 39.) The Mandate is intended to redress "altered … hydrology and natural geomorphic processes along the Tuolumne River corridor" caused by the damming of the river decades ago. (*Id.* at 38.)[27]

According to the Districts, Condition 12 contains more than four pages of specific requirements. It generally requires the preparation, approval, and implementation of a "Restoration Plan" to "construct a minimum of 150 acres of 100 percent suitable floodplain rearing habitat that is designed to lower existing floodplain surface elevation in the first 10 years following …approval."[28] They also contend that Condition 12 requires developing and implementing a "monitoring plan" to assess the effects of the project on floodplain inundation, fish use, vegetation, and other factors; and annual monitoring for at least 10 years, and after 25 years, a "comprehensive evaluation" whether "additional floodplain restoration projects" will be required.[29]

III. Positions of the Parties

A. Turlock and Modesto Irrigation Districts

On April 18, 2022, the claimants filed comments on the Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim.[30] The claimants object to the process, stating they were given insufficient notice based on the letter Commission staff issued regarding the Commission's lack of jurisdiction. They argue, "Commission staff's bare, uncertified, and apparently unprecedented assertion is inadequate to constitute "notice" of why Commission staff believe the joint test claim should be dismissed. . . . Commission staff should have provided Claimants with a more fulsome explanation of the proposed dismissal of the joint test claim"[31]

The claimants further argue that the Commission already adjudicated Test Claims 10-TC-12 and 12-TC-01 (*Water Conservation*) for the Oakdale and Glenn-Colusa Irrigation Districts, so the instant Test Claims cannot be dismissed as a matter of law.[32] Additionally, the claimants assert

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[26] Exhibit A, Test Claim, filed January 14, 2022, pages 78, 129.

[27] Exhibit A, Test Claim, filed January 14, 2022, page 14.

[28] Exhibit A, Test Claim, filed January 14, 2022, pages 16-17.

[29] Exhibit A, Test Claim, filed January 14, 2022, page 17.

[30] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022

[31] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 1.

[32] Exhibit G (2), Commission Decision, *Water Conservation*, 10-TC-12 and 12-TC-01. In *Water Conservation*, two of the irrigation and water districts admitted they collected no property tax

that, if Commission staff believes facts pertaining to the districts make them immune to the constitutional tax and spend limitations, that they "have the initial burden to explain their thinking and then provide a reasonable opportunity for MID and TID to make the requisite factual showing in response."[33] The claimants cite the trial court opinion in *Paradise Irrigation District v. Commission on State Mandates* in which the court found that the Commission had abused its discretion in determining that two of the irrigation districts in that case were not eligible to claim reimbursement because the Commission did not determine whether the districts received any proceeds of taxes within the meaning of article XIII B, and the holding was not disturbed on appeal.[34] According to the claimants:

> If, notwithstanding Commission staff's insistence that the issue here is solely one of law, staff now intends to assert that MID and TID do not as a factual matter receive any proceeds of taxes, Commission staff have the initial burden to establish those facts. Only if Commission staff meet that initial burden can MID and TID be expected to understand why their joint test claim is proposed for dismissal and to properly appreciate what kind of factual showing they should prepare in response. Claimants object to being required to put on evidence on any factual issues before Commission staff have met their initial burden, and also object to the extent Claimants are not given a full and fair opportunity to respond,

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revenue and identified no other "proceeds of taxes," including the receipt of special taxes, and thus, the Commission found they were not eligible to claim reimbursement under article XIII B, section 6. (https://csm.ca.gov/decisions/121214.pdf p. 38.) The Commission also concluded that South Feather Water and Power Agency and Paradise Irrigation District were eligible to claim reimbursement because they filed declarations that they were establishing their appropriations limit in accordance with the law. (https://csm.ca.gov/decisions/121214.pdf p. 38.) The Commission further concluded that Oakdale Irrigation District and Glenn-Colusa Irrigation District were eligible to claim reimbursement based on annual reports identifying the receipt of property tax revenue. (https://csm.ca.gov/decisions/121214.pdf p. 39.)

[33] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, pages 2-3.

[34] Exhibit G (7), Notice of Entry of Judgment, *Paradise Irrigation Dist. v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2015-80002016, pages 19-25. The court found that the Commission properly interpreted *County of Fresno v. State of California* (1991) 53 Cal.3d 482 (holding that article XIII B, section 6 was designed to protect only proceeds of taxes and expenses recoverable from other than proceeds of taxes are not reimbursable under article XIII B, section 6), but misapplied the decision to the facts since the Commission focused on property taxes, but did not determine if the districts received any other proceeds of taxes. On appeal, the court did not reach the eligibility issue since the dismissed districts "failed to show how they incurred reimbursable state-mandated costs" noting that they had sufficient fee authority under Government Code section 17556(d) and thus, finding there were no costs mandated by the state. (*Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 197-198.)

including with additional evidence, to whatever evidence Commission staff might offer before or at the hearing.[35]

The claimants assert that their Test Claim makes a prima facie showing that the alleged mandate "could only be funded by the proceeds of taxes." They argue:

> Irrigation districts like TID and MID raise revenues through charges for service (Water Code § 22280) or levies on real property (Water Code § 25701). [Footnote omitted.] Charges and levies are presumptively also taxes. (Article XIII C § 1(e).) Charges are taxes unless "imposed for a specific government service or product provided directly to the payor that is not provided to those not charged". (Article XIII C § 1(e)(2).) Levies are also taxes unless "imposed in accordance with the provisions of Article XIII D" (Article XIII C § 1(e)(7)), including those provisions prescribing that the levy "shall not exceed the proportional cost of the service attributable to the parcel" (Article XIII D § 6(b)(3)), and that they may not be used for "general governmental services … where the service is available to the public at large in substantially the same manner as it is to property owners" (Article XIII D § 6(b)(5)). If the charges or levies irrigation districts would impose to fund a State mandate do not overcome that presumption, they are deemed taxes subject to the tax-and-spend limitations of Articles XIII A and XIII B of the California Constitution.[36]

The claimants contend that they cannot impose fees because the alleged mandate is intended to benefit lands outside district boundaries and does not benefit their customers. The claimants conclude that they have standing to pursue the Test Claim,[37] and attach to their comments a declaration from the Accounting and Finance Department Manager of Turlock Irrigation District stating in relevant part that the District collected property taxes from Stanislaus and Merced Counties in 2018, 2019, 2020 and 2021, as follows:

> 2. The District receives annual property tax revenues from Stanislaus County and Merced County.
>
> 3. In 2018, the District received $1,837,715 in property tax revenues from Stanislaus County and $18,965 in property tax revenues from Merced County.
>
> 4. In 2019, the District received $1,987,224 in property tax revenues from Stanislaus County and $18,965 in property tax revenues from Merced County.

[35] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 3.

[36] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 4.

[37] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, pages 4-5.

5. In 2020, the District received $2,059,291 in property tax revenues from Stanislaus County and $ 41,741 in property tax revenues from Merced County.
6. In 2021, the District received $2,177,478 in property tax revenues from Stanislaus County and $50,614 in property tax revenues from Merced County.[38]

The claimants also filed a copy of a check from Stanislaus County to the Turlock Irrigation District, dated May 6, 2022, for $723,805.15, with the description of "current secured taxes."[39]

The claimants filed late comments on May 20, 2022, arguing:

> The Proposed Decision rests on the conclusion that Claimants have fee authority but not taxing authority. Even if that were correct (which it is not [footnote omitted]), fees that go too far become taxes—as they would for the Mandate here. Proposition 26 establishes that all fees start from the presumption they are taxes, and the party asserting that specific fees are not taxes bears the burden of proving it. (Cal. Const., art. XIII A § 3(d). . . . Claimants' argument is that the Mandate at issue, by its nature, could only be funded by fees that are also taxes—but the Proposed Decision dodges the issue.[40]

Claimants' disagree with the Proposed Decision that whether a fee is a tax is a question that must be determined by the courts because under Proposition 26, all fees are presumed to be taxes. According to the claimants, this alleged mandate is not intended to benefit fee payors, so Proposition 26 requires the Commission to presume (as would a court) that claimants would pay for the alleged mandate from fees amounting to taxes.[41] Claimants also argue, "Merely because an issue presents a 'question of law' that the courts on appeal 'decide on independent review of the facts' does not mean the Commission on State Mandates has no jurisdiction to consider the issue when presented in a test claim."[42] Claimants further state that the Commission has "exercised this authority in other cases to decide whether particular fees constitute taxes entitling the local agency to reimbursement. (E.g., Municipal Storm Water and Urban Runoff Discharges, Nos. 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 (31 July 2009), Statement of Decision, pages 58-59." Finally, claimants argue:

> There is no dispute Claimants have authority to levy fees. The real issue is whether parties opposing this joint test claim can overcome the presumption that the fees Claimants would have to impose to fund the Mandate would also

[38] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 32.

[39] Exhibit D, Claimants' Late Comments on the Notice of Proposed Dismissal of Test Claim, filed May 12, 2022.

[40] Exhibit F, Claimants' Late Comments filed May 20, 2022, pages 1-2.

[41] Exhibit F, Claimants' Late Comments filed May 20, 2022, page 3.

[42] Exhibit F, Claimants' Late Comments filed May 20, 2022, page 4.

constitute taxes. (See Cal. Const., arts. XIII A § 3(d), XIII C § 1(e).) The Proposed Decision offers no evidence to overcome the presumption the Mandate would have to be funded by fees constituting taxes.[43]

B. State Agency Comments

No comments were filed on this matter by any state agency.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency 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 programs or increased level of service…

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[44] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[45]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. The claimant is subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution and, thus, eligible to claim reimbursement under article XIII B, section 6.[46]
2. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[47]
3. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or

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[43] Exhibit F, Claimants' Late Comments filed May 20, 2022, page 4.

[44] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[45] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[46] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451; *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; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283;; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

[47] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[48]

4. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[49]

5. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[50]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[51] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[52] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[53]

A. <u>The Commission has fully complied with all procedural due process requirements; the claimants received notice and a full opportunity to protect their interests and present the reasons opposing the proposed dismissal of their Test Claim. In addition, the claimants have the burden to prove they are eligible to claim reimbursement and have incurred costs mandated by the State under article XIII B, section 6 of the California Constitution.</u>

In its comments on the notice of proposed dismissal, the claimants argue: "Commission staff's bare, uncertified, and apparently unprecedented assertion is inadequate to constitute "notice" of why Commission staff believe the joint test claim should be dismissed. . . . Commission staff

[48] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

[49] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[50] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[51] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[52] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[53] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

should have provided Claimants with a more fulsome explanation of the proposed dismissal of the joint test claim"[54]

The Commission disagrees. The protections of procedural due process apply to the Commission's adjudicative proceedings. Although Government Code section 17533 states that Chapter 4.5, beginning with section 11400 of the Administrative Procedures Act (the administrative adjudicative procedures under the APA), does not apply to a hearing by the Commission, the note by the Law Revision Commission states that "Nothing in section 17533 excuses compliance with procedural protections required by due process of law."[55]

Due process noticing requirements are not formulaic; they vary depending on the competing interests involved in each situation.[56] However, prior notice of a potentially adverse decision is constitutionally required and that notice must, at a minimum, be reasonably calculated to afford affected persons the realistic opportunity to protect their interests and present the reasons opposing the proposed decision.[57]

In this case, the claimants were provided notice of the proposed dismissal that Commission staff issued February 22, 2022,[58] which stated the reasons therefor, and the claimants have had the full opportunity to provide both written and (at the hearing) oral comments before the Commission. Section 1183.1(g) of the Commission's regulations provides that any test claim that "the Commission lacks jurisdiction to hear for any reason" . . . "may be rejected or dismissed by the executive director with a written notice stating the reasons therefor." It also requires the Commission to follow the process of section 1187.14(b) for a test claim filed by "a local agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution."[59]

Section 1187.14(b) requires the Commission to provide notice and an opportunity to comment as follows:

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[54] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 1.

[55] See also Government Code section 17559, which allows a claimant to commence a proceeding to set aside a decision of the Commission pursuant to Code of Civil Procedure section 1094.5. Section 1094.5(b) states that the inquiry extends to the questions whether there was a fair trial and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law.

[56] *Linovitz Capo Shores LLC v. California Coastal Commission* (2021) 65 Cal.App.5th 1106, 1123, citing *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 617.

[57] *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 617; *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1280.

[58] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022.

[59] California Code of Regulations, title 2, section 1183.1(b).

> [S]erve written notice to initiate dismissal of the test claim to everyone on the mailing list for the matter. The notice shall announce that another local agency or school district may take over the claim by substitution of parties within 60 days of the issuance of the notice. The notice shall also announce the opportunity to file written comments on the proposed dismissal of the test claim. A copy of the notice shall also be posted on the Commission's website.
>
> [¶] . . . [¶]
>
> (3) If no other local agency or school district takes over the test claim by substitution of parties within 60 days of the issuance of the notice, the Commission shall hear the proposed dismissal of the test claim.
>
> (4) The hearing on a dismissal of a test claim shall be conducted in accordance with article 7 of these regulations.[60]

Commission staff complied with these requirements by issuing the Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim on February 22, 2022.[61] This notice specifically identified the reasons for the proposed dismissal as follows:

> Upon review, Commission staff rejects this Test Claim pursuant to Commission regulation section 1183.1(a) because neither Turlock Irrigation District nor Modesto Irrigation District are local governments subject to the tax and spend limitations of the California Constitution, and therefore they are not eligible for mandate subvention under article XIII B, section 6 of the California Constitution.[62]

The notice also gave the claimants 60 days to file written comments before the matter would be heard by the Commission in accordance with article 7 of the Commission's regulations, and provided the tentative hearing date,[63] affording the claimants the opportunity to attend the hearing and comment or testify. This notice was also sent to the mailing list and was posted on the Commission's website.[64]

In addition, Commission staff provided the claimants' authorized representative, via his public records request of March 4, 2022, with over one hundred Commission documents regarding whether a local agency is subject to the tax and spend provisions of article XIII B of the

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[60] California Code of Regulations, title 2, section 1187.14(b).

[61] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022.

[62] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022, page 1.

[63] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022, page 2.

[64] Exhibit B, Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim, issued February 22, 2022, pages 3-8. See https://csm.ca.gov/matters/21-TC-02.php.

California Constitution and relating to article XIII B, section 8 of the California Constitution.[65] Documents responsive to this request were provided on March 14, 2022 and April 8, 2022.[66]

Further, under section 1181.9 of the Commission's regulations, the hearing notice and agenda is issued at least ten days before the Commission hearing and, in this case, was issued to the claimants on May 4, 2022.[67] In addition the Proposed Decision was issued to the claimants on May 13, 2022. Thereafter, any party may request to postpone the hearing for good cause, which includes the complexity of the issues.[68]

Accordingly, the Commission has fully complied with all procedural due process requirements, and the claimants have received notice and a full opportunity to protect their interests and present the reasons opposing the proposed dismissal.

The claimants also argue that the Commission has the burden of proof, stating:

> If, notwithstanding Commission staff's insistence that the issue here is solely one of law, staff now intends to assert that MID and TID do not as a factual matter receive any proceeds of taxes, Commission staff have the initial burden to establish those facts. Only if Commission staff meet that initial burden can MID and TID be expected to understand why their joint test claim is proposed for dismissal and to properly appreciate what kind of factual showing they should prepare in response.[69]

However, the burden of bringing a claim and showing that the claimant is eligible to claim reimbursement and has incurred costs mandated by the State under article XIII B, section 6 is with the test claimant.[70] Whether a local agency is entitled to reimbursement under article XIII B, section 6 is a question of law.[71]

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[65] Exhibit G (8), Public Records Request, March 4, 2022.

[66] Exhibit G (9), Public Records Request Response Part 1, March 14, 2022; Exhibit G (10), Public Records Request Response Part 2, March 28, 2022; Exhibit G (11), Public Records Request Response Part 3, April 8, 2022.

[67] Exhibit G (3) Commission May 27, 2022 Hearing Agenda Notice, issued May 4, 2022.

[68] California Code of Regulations, title 2, section 1187.9(b).

[69] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 3.

[70] Evidence Code section 500; Government Code sections 17551, 17553.

[71] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 282 [finding the two bases for decision, including whether the claimant is eligible to claim reimbursement under section 6, presents pure questions of law].

B. <u>Turlock Irrigation District and Modesto Irrigation District are not subject to the taxing and spending limitations of articles XIII A and XIII B because they are funded by other than proceeds of taxes, are not subject to the appropriations limit of article XIII B, and are therefore not entitled to reimbursement under article XIII B section 6 of the California Constitution.</u>

Article XIII B, section 6 of the California Constitution requires in relevant part that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse the local government for the costs of the program or increased level of service," with exceptions as specified. The reimbursement requirement in article XIII B, section 6 "was included in recognition of the fact 'that articles XIII A and XIII B severely restrict the taxing and spending powers of local government.'"[72]

1. Article XIII A imposes limits on the power to adopt and levy taxes and article III B restricts the growth of appropriations financed by "proceeds of taxes." Special districts that existed on January 1, 1978 and did not have the power to levy or did not collect ad valorem property taxes in fiscal year 1977-1978, and those districts created later are totally funded by revenues "other than the proceeds of taxes," and so are not subject to the appropriations limit of article XIII B.

Article XIII A was adopted in 1978 by Proposition 13 to impose a limit on state and local power to adopt and levy taxes. Article XIII A, section 1 limits ad valorem tax on real property to one percent of the cash value of that property, which section 2 provides is assessed at the time of purchase, new construction, or change of ownership; and can increase no more than two percent per year. Article XIII A, section 3 requires that "Any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed." Similarly, article XIII A, section 4 eliminates the right of local entities (cities, counties, and special districts) to impose ad valorem taxes on real property or transaction or sales taxes on the sale of real property. To prevent local taxing entities from circumventing these tax limitations, article XIII A, section 4 further requires that any new or increased special tax proposed by a county, city or special district must be approved by a two-thirds vote of the local electorate.[73]

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[72] *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* (2016) 1 Cal.5th 749, 763.

[73] Article XIII A, section 4 states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." See also *Borikas v. Alameda Unified School Dist.* (2013) 214 Cal.App.4th 135, 142.

As explained by the courts, special districts were hard hit by Proposition 13 and the Legislature thereafter encouraged special districts to rely on user fees and charges for raising revenue since article XIII A eliminated their ability to raise revenue directly from property taxes:

> Hard hit by Proposition 13 were many special districts, concerning which the Legislature also declared that: "The Legislature finds and declares that many special districts have the ability to raise revenue through user charges and fees and that their ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIII A of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenues after the 1978-79 fiscal year. Such districts are encouraged to begin the transition to user fees and charges during the 1978-79 fiscal year." (Gov. Code, § 16270, eff. June 24, 1978; and see § 16279.1.)[74]

In 1979, article XIII B, also known as the Gann Limit or the appropriations limit, was adopted by Proposition 4 to "restrict[] the amounts state and local governments may appropriate and spend each year from the 'proceeds of taxes.'"[75] Article XIII B, section 8 defines the scope of local government entities' "appropriations subject to limitation" to mean "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6 . . . .)"[76] "Proceeds of taxes," in turn, is defined to "include, but not be restricted to, *all tax revenues* and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds *exceed* the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues."[77] Such "excess" proceeds from licenses, charges, and fees are considered taxes.[78]

Article XIII B was not intended to reach beyond taxation and does not restrict the growth in appropriations financed from nontax sources, such as bond funds, user fees based on reasonable costs, or revenues from local assessments.[79] In *County of Placer v. Corin*, the court explained

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[74] *Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495, 499. In 1996, the voters approved Proposition 218, which added article XIII C, section 2 to the California Constitution to clarify that "Special purpose districts or agencies, including school districts, shall have no power to levy general taxes."

[75] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762, citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58-59.

[76] California Constitution, article XIII B, section 8(b). Emphasis added.

[77] California Constitution, article XIII B, section 8(c), emphasis added. See also Government Code section 7901(i).

[78] California Constitution, article XIII B, section 8(c). See also Government Code section 7901(i).

[79] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; and *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451, finding that revenues from a local special assessment for

that article XIII B's limitation on the expenditure of "proceeds of taxes" does not limit the ability to expend government funds from all sources:

> [A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on "appropriations subject to limitation," which consists primarily of the authorization to expend during a fiscal year the "proceeds of taxes." (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to the proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[80]

In 1991, the California Supreme Court reiterated that article XIII B was not intended to reach beyond taxation:

> Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)[81]

Article XIII B and the statutes that implement it further make clear that special districts that are funded entirely by "other than proceeds of taxes" (such as from bond funds, or fee or assessment revenue) are not subject to the appropriations limit at all. Article XIII B, section 9(c) provides that "appropriations subject to limitation" do *not* include those appropriations of any special district that existed on January 1, 1978, and did not levy ad valorem property taxes as of the 1977-1978 fiscal year, or those that existed or were created later and are funded entirely by "other than the proceeds of taxes," as follows:

> 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 $12^1/_2$ 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.

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the construction of public improvements are not "proceeds of taxes" subject to the appropriations limit.)

[80] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

[81] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

Government Code section 7901(e), which implements article XIII B,[82] clarifies that the local agencies that existed on January 1, 1978, and either did not possess the power to levy a property tax at that time or did not levy a property tax in excess of 12 ½ cents per $100 of assessed value in fiscal year 1977-1978, fall within the provisions of article XIII B, section 9(c) and are not "local agencies" at all for purposes of article XIII B:

> "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 ½ cents per one hundred dollars ($100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

There are some special districts, however, that had the authority to levy property taxes before article XIII A was enacted and levied property taxes in fiscal year 1977-1978, and continue to receive property tax revenue subject to the appropriations limit. Government Code section 7910 requires the governing body of these districts, by resolution, to establish their appropriations limits each year and make other necessary determinations for the following fiscal year pursuant to article XIII B of the California Constitution at a regularly scheduled meeting or noticed special meeting. Section 7910 further requires that fifteen days prior to the meeting, documentation used in the determination of the appropriations limit and other necessary determinations shall be made available to the public. In addition, some special districts have the authority to levy special taxes and other "proceeds of taxes," which would be subject to the appropriations limit of article XIII B.

2. Local agencies that are funded by other than proceeds of taxes are not subject to the appropriations limit of article XIII B, and are not entitled to reimbursement under section 6 and any test claim filed by these local agencies shall be dismissed.

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues. The purpose is to prevent "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill-equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B*

[82] Government Code section 7900(a) states: "The Legislature finds and declares that the purpose of this division is to provide for the effective and efficient implementation of Article XIII B of the California Constitution."

impose."[83] Thus, the courts have made clear that article XIII B, section 6 requires subvention only when the costs in question can be recovered solely from tax revenues:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution *severely restricted the taxing powers* of local governments. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid*.; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the *tax revenues* of local governments from state mandates that would require 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 XIIIB requires subvention only when the costs in question can be recovered solely from tax revenues.[84]

As indicated above, agencies that are funded by revenues other than "proceeds of taxes" are not subject to the appropriations limit of article XIII B. These local agencies cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[85] Therefore, the Commission's regulations make it clear that a test claim filed by local agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution shall be dismissed.[86]

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[83] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763, quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 (emphasis added); see also, *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185, holding that reimbursement under article XIII B, section 6 is only required when a mandated new program or higher level of service forces local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."

[84] *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.

[85] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

[86] California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

3. Turlock and Modesto Irrigation Districts are funded by other than proceeds of taxes, are not subject to the appropriations limit of article XIII B, and are therefore not entitled to reimbursement under section 6.

As indicated above, special districts that existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on their behalf[87] an ad valorem property tax rate on all taxable property in the districts on the secured roll in excess of 12 ½ cents per one hundred dollars ($100) of assessed value for the 1977-1978 fiscal year, are not subject to the appropriations limit. Moreover, if these districts are later funded by revenues other than "proceeds of taxes," they are not subject to the appropriations limit of article XIII B and, thus not entitled to reimbursement under article XIII B, section 6.

Based on the law and documents in the record, the claimants are wholly funded by bond revenue, assessments, fees and charges, which are *not* "proceeds of taxes" subject to the appropriations limit of article XIII B. Therefore, the claimants are not eligible to claim reimbursement under article XIII B, section 6.

The claimants existed on January 1, 1978. Turlock Irrigation District was founded on June 6, 1887.[88] Modesto Irrigation District was founded in July 1887.[89] These districts are governed by Division 11 of the Water Code (The Irrigation District Law, codified at Water Code sections 20500 et seq.),[90] the history of which is explained in *Turlock Irrigation Dist. v. Hetrick* (1999) 71 Cal.App.4th 948:

> In 1887, the California Legislature enacted the Wright Act, which gave irrigation districts the power to construct and maintain irrigation and drainage systems. The Wright–Bridgeford Act was passed 10 years later. The principal purpose of this legislation "was to put water to agricultural use. Powers were adequate for securing a water supply and furnishing it to included lands." (Henley, *The Evolution of Forms of Water Users Organizations in California* (1957) 45 Cal.L.Rev. 665, 668; Harding, *Background of California Water and Power Problems* (1950) 38 Cal.L.Rev. 547, 555.) In 1919, the Wright–Bridgeford Act was amended to permit irrigation districts to engage in the generation, distribution and sale of electricity. (Stats. 1919, ch. 370, § 1, p. 778.) In 1943, a new set of enabling statutes known as the Irrigation District Law, codified at Water Code

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[87] The phrase "taxes levied by or for an entity," which is contained in the definition of "appropriations subject to limitation" in article XIII B, section 8, requires the local government, for whom the taxes are levied, to have the taxing power itself. (*Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32-33.)

[88] Exhibit G (4), History of the Turlock Irrigation District, https://www.tid.org/about-tid/tid-history/ (accessed on April 20, 2022).

[89] Exhibit G (6), Modesto Irrigation District, Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 years of the Modesto Irrigation District*, chapter 4, https://www.mid.org/about/history/chpt_04.html (accessed on April 20, 2022).

[90] Exhibit A, Test Claim, filed January 14, 2022, page 14.

> section 20500 et. seq., was enacted. This legislation granted irrigation districts authority to "do any act necessary to furnish sufficient water in the district for any beneficial use." (Wat. Code, § 22075.) In 1949, irrigation districts were granted power to acquire rock quarries and other projects for the preparation of sand and cement. (Gov. Code, § 55500.) These statutes remain in force today.[91]

As stated above, the Irrigation District Law was added by the Legislature in 1943, and replaced earlier laws governing irrigation districts.[92] As the courts have made clear, irrigation districts have only those powers granted to them under the enabling legislation, including the power to tax.[93]

The Irrigation District Law authorizes irrigation districts to levy annual assessments;[94] issue bonds;[95] charge fees or tolls for specified services, such as water and electricity;[96] and (as of 1991) levy special taxes for specific purposes in accordance with article XIII A of the California Constitution, which must be approved by a two-thirds vote of the local electors.[97] But the

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[91] *Turlock Irrigation Dist. v. Hetrick* (1999) 71 Cal.App.4th 948, 951.

[92] Exhibit G (1), 1943 Irrigation District Act (Stats. 1943, chs. 368, 372).

[93] *Inzana v. Turlock Irrigation Dist.* (2019) 35 Cal.App.5th 429, 449; *Moody v. Provident Irrigation Dist.* (1938) 12 Cal.2d 389, 394 ["An irrigation district is a public body, and under the Wright law has only such powers as are given to it by that act. Such powers are enumerated in the act"]; *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 247-248 ["The power of a county or other public corporation to impose any tax is only that which is granted by the legislature, and its exercise must be within the limits and in the manner so conferred."]; and *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1454 [The power of a local government to tax is not inherent. "The power is derived from the Constitution upon authorization by the Legislature. (Art. XIII, § 24.)"].

[94] Water Code sections 25650 et seq., added by Statutes 1943, chapter 372.

[95] Water Code sections 24950 et seq., added by Statutes 1943, chapter 372.

[96] Water Code sections 22280 et seq., added by Statutes 1943, chapter 372.

[97] Water Code section 22078.5 (Stats. 1991, ch. 70), which is in Article 1, states: "A district may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, except that unimproved property may be taxed at a lower rate than improved property."

Government Code section 50075 states: "It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."

Government Code section 50075.1 states: "On or after January 1, 2001, any local special tax measure that is subject to voter approval that would provide for the imposition of a special tax by a local agency shall provide accountability measures that include, but are not limited to, all of the following: (a) A statement indicating the specific purposes of the special tax. (b) A requirement

Irrigation District Law, as originally enacted in 1943 and as the code sections exist today, does not authorize irrigation districts to levy property taxes or other taxes that raise general revenues, and it does not appear that the law ever did.[98] That would explain why in 1895, the California Supreme Court explained at considerable length how the assessment authority of irrigation districts is distinguished from the taxing power.[99]

In an 1898 Supreme Court decision, the Court describes the authorized revenue sources for irrigation districts to include bonds, assessments, fees, and charges, but no authority to levy taxes as follows:

> The irrigation act specifically provides for three funds. The first is the 'Bond Fund,' provided in section 22, as amended in 1889 (St. 1889, p. 16). This fund is raised by assessment upon the district, and is to be applied to the payment of the interest on the bonds and their ultimate redemption. Another fund is designated by section 15 (St. 1891, p. 147) as the 'Construction Fund,' which is to be applied to the purchase of necessary property, and constructing canals and works, which fund is derived, originally at least, from the sale of bonds. There is another source of revenue provided for in section 37 of the act (St. 1887, p. 43), but no name is given to it. So much of said section as is material here is as follows: 'The cost and expense of purchasing and acquiring property, and constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portion of said canal and works as are completed and in use, including salaries of officers and employés [sic], the board may either fix rates of toll and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expenditures by a levy of assessments therefor, or by both said tolls and assessments.' . . .
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> [¶] . . . [¶]
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> . . . The tolls and charges made against the consumers, and the assessments, are each and both for the same purpose, viz. to defray the expenses 'of the care, operation, management, repair, and improvement of such portions of the said

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that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a). (c) The creation of an account into which the proceeds shall be deposited. (d) An annual report pursuant to Section 50075.3."

[98] Exhibit G (1), 1943 Irrigation District Act (Stats. 1943, chs. 368, 372).

[99] *City of San Diego v. Linda Vista Irrigation Dist.* (1895) 108 Cal.189, 192-193. The Court said, " . . . the act under which said irrigation district was organized provides for an annual assessment upon the real property of the district; 'and all the real property in the district shall be and remain liable to be assessed for such payments, as hereinafter provided.' St. 1887, p. 37, § 17." The court held that "The lands assessed and sold by appellants were municipal lands, situated within the city limits, and are exempt from taxation under section 1 of article XIII of the constitution." (*City of San Diego v. Linda Vista Irrigation Dist.* (1895) 108 Cal.189.)

> canal and works as are completed and in use, including salaries of officers and employés.' [sic] These expenses may be provided for either by tolls or by assessments, or by both; . . .[100]

In a 1930 case, a court distinguished between irrigation district assessments and other local (municipal utility district) taxes as follows:

> In the Municipal Utility District Act, St.1921, p. 245, the distinction between assessments and taxes is entirely eliminated. Under that act its so-called assessments become taxes and are collected with other taxes. While county taxes are made up of a composite rate for general purposes, for road districts, for school districts, and for a number of other purposes, *irrigation taxes are not included.* It is true, however, that such assessments are levied by an agency created by the state for a public purpose, and under an authority delegated by the state.[101]

In 1967, another court described Turlock Irrigation District's powers to make assessments and impose charges:

> The district, therefore, is formed to provide a service which can be and often is provided by a quasi-public corporation. Furthermore, in accomplishing its purpose it does not exercise general powers of government; in fact, with a few possible exceptions, its powers are essentially administrative and ministerial in character. It possesses the right to make assessments but even this right is limited to assessments against land exclusive of improvements or personal property. [FN omitted.] . . . It possesses the right to impose charges for its services but this right is inherent in private and quasi-public corporations. [¶] ... [¶]
>
> Assessments for revenue purposes are limited to the land and may not include improvements or personal property.[102]

In 2001, California's Attorney General opined that a county auditor may not allocate a portion of property tax revenue to an irrigation district that levied only an ad valorem *assessment* prior to

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[100] *Mitchell v. Patterson* (1898) 120 Cal.286, 288-289. See also 65 Opinions of the California Attorney General 187, 1982, page 1. "To pay the bond charges, and to raise maintenance and operation charges, a district is authorized to levy 'assessments' (pt. 10 [commencing with § 25500] of div. 11 of the Wat. Code) or, in lieu thereof, to levy charges (§§ 20541, 22280, 25655) on the users of the services supplied by the district."

[101] *Bolton v. Terra Bella Irr. Dist.* (1930) 106 Cal.App. 313, 317. Emphasis added. That sometimes irrigation assessments are described as "irrigation taxes" was explained by the U.S. Supreme Court in *Fallbrook Irrigation Dist. v. Bradley* (1896) 164 U.S. 112, 176: "Although there is a marked distinction between an assessment for a local improvement and the levy of a general tax, yet the former is still the exercise of the same power as the latter, both having their source in the sovereign power of taxation."

[102] *Thompson v. Board of Directors of Turlock Irrigation Dist.* (1967) 247 Cal.App.2d 587, 593.

fiscal year 1978-1979, but not an ad valorem tax.[103] The opinion explains that the Legislature adopted Government Code section 26912 in response to article XIII A, section 1, which restricted property tax revenue to one percent of the value of the property and required counties to apportion the revenue in accordance with the law. Government Code section 26912(a) expressly provides that "For the purposes of this section, a local agency includes a city, county, city and county, and special district . . . *if such local agency levied a property tax during the 1977-78 fiscal year or if a property tax was levied for such local agency for such fiscal year*."[104] The opinion finds that "The Irrigation District Law authorizes irrigation districts to levy "assessments" (see, e.g., Wat. Code, §§ 25650, 25652, 25653) and "charges" for services (Wat. Code, § 22280), but not "taxes."[105] Thus, article XIII A did not allow the county auditor to apportion property tax revenue to the irrigation district.[106]

Turlock Irrigation District asserts, however, that it collected property taxes in 2018, 2019, 2020, and 2021.[107] The claimants submitted a copy of a check from Stanislaus County to the Turlock Irrigation District, dated May 6, 2022, for $723,805.15, with the description of "current secured taxes."[108] And the 2020 and 2019 Turlock Irrigation District Financial Audit mentions "TID levies ad valorem property taxes on property located in the counties of Stanislaus and Merced."[109] However, the law does not authorize the District to levy a property tax. That Turlock Irrigation District's revenue is mislabeled a "tax" is explained by the State Controller's County Tax Collectors' Reference Manual, which states:

> When an irrigation district elects to transfer the duties of tax collection to the county (Wat. Code §26650), any assessments levied are collected at the same time

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[103] 84 Opinions of the California Attorney General 81 (Cal.A.G.), 2001.

[104] Statutes 1978, chapter 292 (emphasis added).

[105] 84 Opinions of the California Attorney General 81 (Cal.A.G.), 2001.

[106] 84 Opinions of the California Attorney General 81 (Cal.A.G.), 2001; see also *Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495, a case filed by a hospital district seeking a writ of mandate compelling the county to apportion real property tax revenue to the district for the 1979-1980 fiscal year. The hospital district was authorized by law to levy a tax upon real property within its territorial limits, but had not levied any property taxes for the 1977-1978 fiscal year, nor had a tax been levied for it. (*Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495, 497.) The court denied the writ, holding that Government Code section 26912 was constitutionally valid and clear, and was properly applied to the hospital district. (*Marin Hospital Dist. v. Rothman* (1983) 139 Cal.App.3d 495, 502.)

[107] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 32.

[108] Exhibit D, Claimants' Late Comments on the Notice of Proposed Dismissal of Test Claim, filed May 12, 2022.

[109] Exhibit G (17), Turlock Irrigation District Report of Independent Auditors 2020 2019, https://issuu.com/turlockirrigationdistrict/docs/tid_final_fs?fr=sYzNhZTE5NTkxNTU (accessed April 20, 2022) page 22.

> and in the same manner as other county taxes. Once collected, the assessments are deposited into the county treasury and later transferred to the district.[110]

Moreover, Turlock Irrigation District's budgets for 2017 through 2021 show that its revenue came from retail electric, wholesale electric, gas and oil revenue, wholesale wind revenue, "BABs" revenue, and water operating revenues.[111] These budget documents do not show that the district received any revenue from taxes or established an appropriations limit. Neither District reported an appropriations limit to the State Controller in fiscal year 2009-2010, the last year for which the reports are available online.[112]

In addition, according to Turlock Irrigation District's 2020 and 2019 financial audit report, "TID has maintained rates for electric service that have been sufficient to provide for all operating and maintenance costs and expenses, debt service, repairs, replacements and renewals and to provide for base capital additions to the system."[113]

In the history available on its website, the Modesto Irrigation District reports that it discontinued its "irrigation tax" in 1959, it remains tax-free today, and adopted a water-user charge in 1976:

> Starting in 1938, power revenues were transferred annually to the irrigation department. . . . The transfer of power revenues permitted a steady reduction of irrigation taxes. . . . In 1935 the taxes were slashed from $6.40 per $100 assessed valuation of property to $2.76. Three years later, taxes were down to $2.40 and soon thereafter to $1.50. This rate prevailed for 16 years throughout World War II and the post war years when other districts were increasing water charges repeatedly. At the same time, assessed valuations of only $80 per acre had been unchanged since 1915, even though the land was selling for as much as $1,000 per acre. Thus, irrigators were receiving their annual supplies of water for a bare $1.20 per acre.

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[110] Exhibit G (13), State Controller's Office, County Tax Collectors' Reference Manual, chapter 1000, page 11.

[111] Exhibit G (14), Turlock Irrigation District 2019 Proposed Operations and Capital Budget, https://www.tid.org/download/2019-budget/ (accessed on April 20, 2022), page 1; Exhibit G (16) Turlock Irrigation District 2022 Budget, https://www.tid.org/download/current-tid-budget/ (accessed on April 20, 2022), page 3. There is a presumption that the claimants' budget documents are valid and that their official duties have been regularly performed. (Evid. Code, § 664.)

[112] Exhibit G (12), State Controller's Office, 2010 Special District Report, http://californiacityfinance.com/SCOspdistr200910.pdf (accessed on April 20, 2022), pages 174, 252.

[113] Exhibit G (17), Turlock Irrigation District Report of Independent Auditors 2020 2019, https://issuu.com/turlockirrigationdistrict/docs/tid_final_fs?fr=sYzNhZTE5NTkxNTU (accessed on April 20, 2022), page 1.

> In 1959 irrigation taxes were canceled. . . . Today the district remains tax free, although in 1976 an irrigation water-user charge was adopted.[114]

Although Modesto Irrigation District's website mentions an "irrigation tax" last imposed in 1959, the Irrigation District Law, as stated earlier, did not provide the authority to levy property taxes. The claimants only had the authority to levy an assessment on the property, and other fees and charges.[115] In addition, Modesto Irrigation District's budget for 2018 through 2021 shows water revenues, electric revenues, and other revenues, but no tax revenues - and no appropriations limit is identified.[116]

The claimants also allege that they have authority to collect property tax revenue pursuant to Water Code section 25701.[117] Water Code section 25701 authorizes irrigation districts to levy assessments, but not taxes as follows: "The board may at any time call an election to submit to the voters a proposal to levy a particular purpose *assessment* to be applied to any of the purposes of the district." (Emphasis added.) Even though the county may collect the assessment on behalf of an irrigation district, and sometimes as part of the property tax bill,[118] taxes and assessments are different. As explained by the California Supreme Court in the 1895 decision in *City of San Diego v. Linda Vista Irrigation Dist.*, assessments are imposed on specific property for a specific purpose, and taxes are imposed on all property for general purposes.

> But the assessment to satisfy which the lands in question were sold is not a tax, within the meaning of said provision of the constitution. The act under which the Linda Vista [Irrigation] District was organized authorizes the formation of districts where the lands of the different owners are 'susceptible of one mode of irrigation from a common source, and by the same system of works.' The district, when formed, is a local organization, to secure a local benefit, to be derived from the irrigation of lands from the same source of water supply, and by the same system of works. It is, therefore, a charge upon lands benefited, or capable of being benefited, by a single local work or improvement, and from which the state, or the public at large, derives no direct benefit, but only that reflex benefit which all local improvements confer. In *Taylor* v. *Palmer*, 31 Cal. 241, 255, the court

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[114] Exhibit G (6), Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 Years of the Modesto Irrigation District*, chapter 4, https://www.mid.org/about/history/chpt_04.html (accessed on April 20, 2022).

[115] Exhibit G (1), 1943 Irrigation District Act (Stats. 1943, chs. 368, 372).

[116] Exhibit G (5), Modesto Irrigation District 2020 Detailed Budget, https://www.mid.org/about/budget/documents/2020Budget.pdf (accessed on April 20, 2022), page 3.

[117] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, page 4.

[118] See Water Code sections 26650 et seq. (authorizing an irrigation district to transfer the duties of collector to the county tax collector) and Government Code section 29304 (costs added to the assessment to pay for the county's collection of the assessment).

> defined the term "assessment," as distinguished from "taxation," thus: "It is not a power to tax all the property within the corporation for general purposes, but the power to tax specific property for a specific purpose. It is not a power to tax property generally, founded upon the benefits supposed to be derived from the organization of a government for the protection of life, liberty, and property, but a power to tax specific property founded upon the benefits supposed to be derived by the property itself from the expenditure of the tax in its immediate vicinity."[119]

In *County of Placer v. Corin,* the court explained the difference between taxes and assessments as follows:

> Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government. [Citations omitted.] Special or local assessments, on the other hand, are imposed on property within a limited area for payment of a local improvement allegedly enhancing the value of the property taxed. [Citations omitted.] Special assessments can be levied only on the specific property benefited and not on all the property in the district. [Citations omitted.]
>
> In *County of Fresno v. Malmstrom* [(1979) 94 Cal. App. 3d 974], the question presented was whether special assessments were "special taxes" within the provisions of article XIII A. While noting that the terms "tax," "special tax," and "special assessment" have at times become hopelessly entangled in judicial opinions, legislative and legal treatises, the Malmstrom court recognized and followed the long standing precedent that strictly speaking, special assessments are not taxes at all. (Id at pp. 982-983 [remaining citations omitted.]
>
> In *Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545 [unofficial cite omitted], the court adopted the reasoning of the Malmstrom court in determining special assessments levied to benefit specific properties within a specified district were not includable in the 1 percent of assessed value limitation imposed on ad valorem taxes by article XIII A, section 1 of the California Constitution. The problem in *Solvang, supra*, resulted from an incongruity in the language of subdivisions (a) and (b) of section 1. Subdivision (a) imposed the 1 percent limitation on ad valorem taxes. Subdivision (b) exempted from the 1 percent limitation ad valorem taxes or special assessments to pay interest and redemption charges on indebtedness approved by the voters prior to the effective date of article XIII A. At issue were nonvoted special assessments for a public parking district created pursuant to general and special statutory authority. Bonds were issued and special assessments to pay the principal and interest were levied annually by the board of supervisors against the benefited properties. The board interpreted article XIII A, section 1 to prohibit such assessment. The court first determined such an application of article XIII A would retroactively deprive the bondholders of their contractual right to repayment and such impairment of contract was constitutionally impermissible. Next, the court

[119] *City of San Diego v. Linda Vista Irrigation Dist.* (1895) 108 Cal.189, 193.

> decided that special assessments designed to directly benefit the property assessed and make it more valuable were not within the 1 percent limitation and the reference to "special assessments" in section 1, subdivision (b) was mere surplusage.[120]

Proposition 218, adopted by the voters in 1996, continues the distinction between assessments and taxes. Article XIID, section 2(b) defines "assessment" to "mean[] any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax." And Article XIII D, section 3 distinguishes between ad valorem property taxes imposed pursuant to Article XIII and Article XIII A; special taxes receiving a two-thirds vote pursuant to Section 4 of Article XIII A; assessments; and fees or charges. The claimants contend their authority to impose fees are actually taxes under Proposition 218 because the alleged mandate is intended to benefit lands outside district boundaries and does not benefit their customers.[121] Whether or not a fee or charge becomes a tax under Proposition 218 is a question that must be determined by the courts.[122] The claimants have submitted no evidence that a court has determined that their fees or charges are, in fact, taxes.

The claimants did not possess the power to levy a property tax on January 1, 1978, and were funded by charges, fees, and assessments; revenues other than "proceeds of taxes." Thus, pursuant to article XIII B, section 9(c) and Government Code section 7901(e), they are not subject to the appropriations limit of article XIII B.

"Proceeds of taxes" also include revenue from special taxes, however. Article XIII B, section 8(c) states that "proceeds of taxes" subject to the appropriations limit shall include "all tax revenues."[123] As indicated above, the Legislature enacted Water Code section 22078.5 in 1991 (Stats. 1991, ch. 70), to authorize irrigation districts to levy a special tax. Section 22078.5 states:

> A district may impose a special tax pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The special taxes shall be applied uniformly to all taxpayers or all real property within the district, except that unimproved property may be taxed at a lower rate than improved property.

Government Code section 50075 states the legislative intent "to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of

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[120] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450-451.

[121] Exhibit C, Claimants' Comments on the Notice of Proposed Dismissal of Test Claim, filed April 18, 2022, pages 4-5.

[122] *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4 th 866, 873-874; *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 693.

[123] California Constitution, article XIII B, section 8(b), (c).

the California Constitution."[124] Government Code section 50075.1 further provides that special taxes can only be levied for specific purposes identified to the voters and if approved by a two-thirds vote of the local electorate in accordance with article XIII A, the revenue can only be applied to that specific purpose.

> On after January 1, 2001, any local special tax measure that is subject to voter approval that would provide for the imposition of a special tax by a local agency shall provide accountability measures that include, but are not limited to, all of the following:
>
> (a) A statement indicating the specific purposes of the special tax.
>
> (b) A requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a).
>
> (c) The creation of an account into which the proceeds shall be deposited.
>
> (d) An annual report pursuant to Section 50075.3.[125]

Therefore, any special taxes proposed by an irrigation district and approved by two-thirds of the voters would be considered "proceeds of taxes" subject to the appropriations limit. Government Code section 7902.8, while not directly applicable because it addresses only special districts formed during fiscal year 1978-1979 that were totally funded by other than the proceeds of taxes, and later imposed a special tax during the 1980-1981 fiscal year (based on the authority in Government Code sections 50075 et seq.), is nonetheless helpful in understanding how the appropriations limit for special taxes is established and calculated:

> [T]he appropriations limit of such an entity [special district], unless otherwise established pursuant to law, shall be deemed established by the electors at the election approving the special tax as that amount equal to the proceeds of taxes received during the first full fiscal year in which proceeds of taxes were received, and shall thereafter be adjusted in any manner which may be required or permitted by Article XIII B of the California Constitution.[126]

As stated above, there is no evidence in the record that the claimants have levied any special taxes and they have no authority to levy other types of taxes. Rather, their budget documents

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[124] Government Code sections 50075 et seq. were originally added by Statutes 1979, chapter 903, in response to article XIII B.

[125] See also Government Code section 50077, which establishes the procedure for imposing a special tax. This is consistent with article XIII C, section 2(a) of the California Constitution, which states that "Special purpose districts or agencies, including school districts, shall have no power to levy general taxes."

[126] See also *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 764, in which the special tax put to the voters established an appropriations limit.

show that they are fully funded with bond revenue, assessments, fees and charges, none of which are "proceeds of taxes" subject to the appropriations limit of article XIII B.[127]

Accordingly, based on the law and evidence in the record, Turlock Irrigation District and Modesto Irrigation District are not subject to the taxing and spending limitations of articles XIII A and XIII B. Instead, they are funded by other than proceeds of taxes, are not subject to the appropriations limit of article XIII B, and are therefore not entitled to reimbursement under section 6.[128]

V. Conclusion

Based on the foregoing analysis, the Commission dismisses this Test Claim pursuant to California Code of Regulations, title 2, sections 1183.1(g) and 1187.14.

[127] Exhibit G (14), Turlock Irrigation District 2019 Proposed Operations and Capital Budget, https://www.tid.org/download/2019-budget/ (accessed on April 20, 2022), page 1; Exhibit G (16) Turlock Irrigation District 2022 Budget, https://www.tid.org/download/current-tid-budget/ (accessed on April 20, 2022), page 3; Exhibit G (17) Turlock Irrigation District Report of Independent Auditors 2020 2019, https://issuu.com/turlockirrigationdistrict/docs/tid_final_fs?fr=sYzNhZTE5NTkxNTU (accessed on April 20, 2022), page 1; Exhibit G (6) Modesto Irrigation District, *The Greening of Paradise Valley, The First 100 Years of the Modesto Irrigation District, chapter 4*, https://www.mid.org/about/history/chpt_14.html (accessed on April 20, 2022); and Exhibit G (5) Modesto Irrigation District 2020 Detailed Budget, https://www.mid.org/about/budget/documents/2020Budget.pdf (accessed April 20, 2022), page 3.

[128] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Elections Code Section 14201 as Added and Amended by Statutes 1994, chapter 920 (SB 1547), and Statutes 2017, chapter 845 (AB 918); and Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020) Filed on May 21, 2021 County of Los Angeles, Claimant	Case No.: 20-TC-03 *California Voting for All Act: Ballot Translations and Posting Requirements* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 23, 2022*) (*Served September 26, 2022*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on September 23, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Elections Code Section 14201 as Added and Amended by Statutes 1994, chapter 920 (SB 1547), and Statutes 2017, chapter 845 (AB 918); and Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020) Filed on May 21, 2021 County of Los Angeles, Claimant	Case No.: 20-TC-03 *California Voting for All Act: Ballot Translations and Posting Requirements* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 23, 2022*) (*Served September 26, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 23, 2022. Brittany Thompson appeared on behalf of the Department of Finance. The claimant did not appear.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the Test Claim by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This Test Claim filed by the County of Los Angeles (claimant) alleges that reimbursement is required for state-mandated activities arising from Elections Code section 14201, as added by Statutes 1994, chapter 920 (SB 1547) and amended by Statutes 2017, chapter 845 (AB 918), and from Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020) (Memo #20096).[1]

The Commission finds that the Test Claim was not timely filed with respect to Elections Code section 14201 as added and amended by Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because the Test Claim was neither filed within 365 days following the effective dates of the test claim statutes nor filed within 365 days of incurring increased costs as a result of those statutes as required by Government Code section 17551. The Test Claim was not filed within 365 days following the effective dates of Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because those statutes went into effect more than 26 years[2] and three years,[3] respectively, before this Test Claim was filed. The Test Claim was not filed within 365 days of incurring increased costs as a result of those statutes because the claimant was required to – and therefore presumptively did[4] – provide language assistance pursuant to Elections Code section 14201 as added and amended by the those statutes in connection with elections that occurred in 2018, three years before this Test Claim was filed.[5] However, there is substantial evidence in the record that the Test Claim was timely filed with respect to Memo #20096, within one year of incurring increased costs as a result of that memo.[6]

The Commission further finds that Memo #20096 does not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Elections Code section 14201 requires a county elections official to provide translated facsimile ballots and other specified forms of language assistance *if* the Secretary of State determines that there is a need for that assistance in the county or precincts within the county, whether because low-English proficiency members of a single language minority meet a three percent threshold in

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[1] Exhibit A, Test Claim, filed May 21, 2021, pages 174-184 (Memo #20096, May 21, 2020).

[2] Statutes 1994, chapter 920 went into effect on January 1, 1995. (Cal. Const., art. IV, § 8(c).)

[3] Statutes 2017, chapter 845 went into effect on January 1, 2018. (Cal. Const., art. IV, § 8(c).)

[4] Evidence Code section 664 ("It is presumed that official duty has been regularly performed.").

[5] See Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017) (requiring precincts in the County of Los Angeles to provide Elections Code section 14201 language assistance in Armenian and Persian for elections conducted between January 1, 2018, and December 31, 2021); Elections Code sections 1200 and 1201 (requiring statewide elections to be held in June and November of 2018); see also Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022, page 2 ("Indeed, the County was already complying with minority language translations as required in Elections Code section 14201.").

[6] Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9).

the county or precincts or because the Secretary has been presented with enough information to believe that a need for that assistance exists. These requirements have been imposed on counties since 2018.[7]

In Memo #20096, the Secretary of State's office notified counties that Elections Code section 14201 required certain counties and precincts to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021. Although Memo #20096 included additional languages for which county elections officials were required to provide language assistance services, it did not itself require or mandate county elections officials to provide those services. Rather, it was Elections Code section 14201 that required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide. All Memo #20096 did was provide notice of these preexisting requirements in Elections Code section 14201.

Accordingly, Memo #20096 does not mandate a new program or higher level of service on county elections officials, and therefore does not impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. The Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/1995 Effective Date of Statutes 1994, chapter 920, enacting Elections Code section 14201.

01/01/2018 Effective Date of Statutes 2017, chapter 845, amending Elections Code section 14201.

05/21/2020 Effective Date of Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #20096 (May 21, 2020), determining that Elections Code section 14201 required language assistance to be provided in 14 additional languages for elections conducted between May 21, 2020 and December 31, 2021.

05/21/2021 The claimant filed the Test Claim.[8]

01/31/2022 The Department of Finance (Finance) filed comments on the Test Claim.[9]

03/01/2022 The claimant filed rebuttal comments.[10]

07/13/2022 Commission staff issued the Draft Proposed Decision.[11]

[7] Elections Code section 14201, as amended by Statutes 2017, chapter 845.

[8] Exhibit A, Test Claim, filed May 21, 2021.

[9] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022.

[10] Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022.

[11] Exhibit D, Draft Proposed Decision, issued July 13, 2022.

08/03/2022 The claimant filed comments on the Draft Proposed Decision.[12]

II. Background

This Test Claim alleges reimbursable state-mandated activities and costs arising from Elections Code section 14201, as added by Statutes 1994, chapter 920 (SB 1547) and amended by Statutes 2017, chapter 845 (AB 918). The Test Claim also alleges reimbursable state-mandated activities and costs arising from Memo #20096, in which the Secretary of State's office provided notice of its determination that Elections Code section 14201 required county elections officials for certain counties and precincts, including a number of precincts in the claimant county, to provide language assistance in additional languages for elections conducted between May 20, 2020 and December 31, 2021.

A. Section 203 of the Federal Voting Rights Act of 1965

"The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting."[13]

Section 203 of the Act requires a state or political subdivision to provide translations of "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," that it provides if the Director of the Census has determined that:

(1) One or more of the following are true:

- "more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient,"
- "more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient," or,
- "more than 5 percent of the American Indian or Alaska Native citizens of voting age within [an] Indian reservation [located at least in part in the political subdivision] are members of a single language minority and are limited-English proficient" and,

(2) "the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate."[14]

Section 203 further defines "language minorities" or "language minority group" for these purposes as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[15]

B. Elections Code Section 14201

Under California Elections Code section 14201, the Secretary of State, by January 1 of each year in which the Governor is elected, must determine the precincts where 3 percent or more of the

[12] Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed August 3, 2022.

[13] *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 315.

[14] 52 United States Code section 10503(b), (c).

[15] 52 United States Code section 10503(d).

voting-age residents are members of a "single language minority" and lack sufficient skills in English to vote without assistance. Specifically, section 14201(c) provides:

> In determining whether it is appropriate to post the election materials in Spanish or other languages, the Secretary of State shall determine the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance. If the number of these residents equals 3 percent or more of the voting age residents of a particular county or precinct, or in the event that interested citizens or organizations provide the Secretary of State with information which gives the Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots, the Secretary of State shall find a need to post at least one facsimile copy of the ballot with the ballot measures and ballot instructions printed in Spanish or other applicable language in the affected polling places.

Since 1983, state law now contained in Elections Code section 14201 has required local officials to post a translated, facsimile copy of the ballot in each polling place in a county or precinct where the Secretary of State has determined that there is a need for those copies in a particular language, whether because low-English proficiency members of a single language minority meet a three percent threshold in the county or precinct or because the secretary was presented with enough information to believe that a need for that assistance exists.[16] From 1983 to 2018, the local officials required to post the facsimile copy were city or county precinct boards.[17] Effective January 1, 2018, amendments made by Statutes 2017, chapter 845 now require county elections officials to perform this duty.[18]

When Statutes 2017, chapter 845 shifted the facsimile copy duty from precinct boards to county elections officials, it also further amended Elections Code section 14201 to require those county elections officials to provide additional forms of language assistance upon the Secretary's determination of need, as follows:[19]

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[16] Former Elections Code section 14203(b) (Stats. 1982, ch. 373, § 1).

[17] Elections Code sections 14201 (Stats. 1994, ch. 920, § 2) and 14203(b) (Stats. 1982, ch. 373, § 1). When Statutes 1994, chapter 920 repealed and added former Elections Code section 14203 as Elections Code section 14201, it did not make any substantive changes to those provisions. (See Stats. 1994, ch. 920, § 3 ("The Legislature intends that the changes made to the Elections Code, as reorganized by this act, have only technical and non-substantive effect.").)

From 1983 to 1996, members of precinct boards were appointed by the county clerk at least 29 days prior to the election. (Former Elec. Code, §§ 23528 (Stats. 1982, ch. 1166, § 21), 23528 (Stats. 1984, ch. 1023, § 6), 12286 (Stats. 1994, ch. 920, § 2).) From 1996 onward, members of the precinct boards have been appointed by either the city or county elections official in charge of the election at least 29 days prior to the election. (Elec. Code, §§ 12286, 13001, see former Elec. Code, §§ 10000 (Stats. 1993, ch. 39, § 2), 12286 (Stats. 1995, ch. 725, § 17.).)

[18] Elections Code section 14201 (Stats. 2017, ch. 845, § 9).

[19] Although Statutes 2019, chapter 597 further amended Elections Code section 14201, all of the changes that statute made to that section were non-substantive, so the section is substantively the

- The county elections official must provide at least two facsimile copies of the ballot with the ballot measures and ballot instructions printed in that language at each polling place. One of these required copies must be posted in a conspicuous location in the polling place while the other must be made available for voters at the polling place to use as a reference when casting a private ballot. The copy made available for voters to use as a reference must be sufficiently distinct in appearance from a regular ballot to prevent voters from attempting to vote on the copy.[20]
- If the secretary determines that the number of voting-age residents in a precinct who are members of a single language minority and who lack sufficient skills in English to vote without assistance *exceeds 20 percent* of the voting-age residents in that precinct, the county elections official must also make at least two additional facsimile copies available for voters at the polling place to use as a reference when casting a private ballot.[21]
- "At least 14 days before an election, the county elections official shall provide information on the county elections internet website identifying all polling places in the county and the languages of facsimile copies of the ballot that will be available to voters at each polling place. Explanatory information pertaining to the list of polling places, but not the list itself, shall be available in all languages in which the county provides facsimile copies of the ballot."[22]
- The county elections official shall include text in the county voter information guide that, in all languages in which the county provides facsimile copies, refers voters with language needs to that portion of that website.[23]
- In each polling place, members of the precinct board must be trained on the purpose and proper handling of the facsimile copies of the ballot and shall be prepared to inform voters of the existence of the facsimile copies of the ballot, as appropriate,"[24] and provide a facsimile copy to a voter upon request for use as a reference when casting a private ballot.[25]

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same as it was as amended by Statutes 2017, chapter 845 (See Stats. 2019, ch. 497, § 107 (making gender-neutralizing changes, replacing "Internet Web site" with "internet website," and replacing "index of registration" with "roster" as a conforming change to Statutes 2017, chapter 805, which replaced references to "index of registration" with "roster" throughout the Elections Code).)

[20] Elections Code section 14201(a).

[21] Elections Code section 14201(b)(2).

[22] Elections Code section 14201(d).

[23] Elections Code section 14201(e).

[24] Elections Code section 14201(c)(1).

[25] Elections Code section 14201(c)(2).

- In each polling place, a sign near the roster must also inform voters, in both English and all languages of facsimile copies available at that polling place, of the existence of the facsimile copies of the ballot.[26]

County elections officials need not comply with any of these requirements with respect to a language if they provide and publicize ballots translated into that language in the same manner as translated ballots provided and publicized pursuant to Section 203 of the federal Voting Rights Act of 1965 (VRA).[27]

C. Memo #20096

Prior to Memo #20096, the Secretary of State's office had determined that there was a significant and substantial need for facsimile ballots in a number of precincts in various counties, including the claimant, for elections taking place between January 1, 2018, and December 31, 2021.[28] Under this prior determination, the claimant's county elections official was required to provide facsimile ballots in Armenian and Persian in a number of precincts for elections held during this period.[29]

In 2019, *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850 (*Asian Americans*) partially invalidated the methodology that the Secretary had used to make this determination. Up until *Asian Americans,* the Secretary had "consistently followed the practice of interpreting "single language minority" as used in Elections Code section 14201 to include the specific language groups identified under the VRA by the Director of the Census and published in the Federal Register."[30] However, as the First District Court of Appeal explained in *Asian Americans*, this practice necessarily – and erroneously – imported the VRA's five percent threshold into the Secretary's Elections Code section 14201 determinations because the only specific language groups the Director of the Census published in the Federal Register were those that met the VRA's five percent threshold.[31] Thus, the Secretary's practice of interpreting "single language minority" as only including those groups necessarily excluded any group that

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[26] Elections Code section 14201(c)(3).

[27] Elections Code section 14201(g).

[28] Exhibit A, Test Claim, filed May 21, 2021, pages 188-191 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017).

[29] Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017). Although this memo also indicates that five of the claimant's precincts were required to provide language assistance in Bengali, a subsequent memo clarified that assistance in Bengali was not required. (Exhibit F (1), California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #18051 (Mar. 5, 2018), page 1 footnote 1, https://elections.cdn.sos.ca.gov/ccrov/pdf/2018/march/18051sr.pdf (accessed on June 6, 2022).)

[30] *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 859; see e.g. Exhibit A, Test Claim, filed May 21, 2021, page 194 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017).

[31] *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 876.

met Elections Code section 14201's three percent threshold in at least one precinct but failed to meet the VRA's five percent threshold in any covered jurisdiction.[32] Consequently, the court invalidated that practice and found that the Secretary must make the State law equivalent of the coverage determinations made by the Director of the Census and the Attorney General and published in the Federal Register, for those precincts that meet the State's three percent threshold but fail to meet the federal five percent threshold.[33]

On May 21, 2020, in Memo #20096, the Secretary's office responded to this holding and notified counties of its determination that 14 more languages met Elections Code section 14201's three percent threshold in a number of precincts for elections taking place between May 21, 2020 and December 31, 2021.[34] This resulted in the claimant's county elections official needing to provide facsimile ballots in Bengali, Burmese, Gujarati, Hindi, Indonesian, Japanese, Mongolian, Telugu, and Thai in a number of precincts for elections held during this time period.[35]

The memo also provided county elections officials with "a summary of applicable requirements" imposed by existing law with respect to these languages, as follows:[36]

- "Poll Worker Training and Education: Poll workers must be educated on the purpose of providing facsimile ballots to limited English proficient (LEP) voters and specifically trained with instructions on how to handle facsimile ballots. (Sec. 14201(c)(1).) Further, poll workers must be aware that LEP voters may bring up to two individuals they choose to assist them in casting their ballot, with the exception of their employer, an agent of their employer, or their union representative. (Sec. 14282(a).)"
- "Bilingual Poll Workers: County elections officials must make a good faith effort to recruit bilingual poll workers for any precinct in which 3% or more of the voting-age residents are members of a single language minority. (Sec. 12303(c).)"
- "Include Polling Place/Vote Center Information in County Voter Information Guide (VIG): The county VIG must include text referring LEP voters to the portion of the county elections website identifying the polling place/vote center locations and the facsimile ballot language(s) provided at those specific locations. The text must be printed in English and any Section 14201 required language(s) as well as federally required language(s) under Section 203 of the federal Voting Rights Act of 1965 (VRA Section 203) for your county. (Sec. 14201(e).) Additionally, the county elections website and VIG must inform voters that if they are unable to mark a ballot, the voter may bring up to two individuals to the polls to assist in voting. (Sec. 14282(b).) This information must

[32] *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 876.

[33] *Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 877-878.

[34] Exhibit A, Test Claim, filed May 21, 2021, page 174 (Memo #20096, May 21, 2020).

[35] Exhibit A, Test Claim, filed May 21, 2021, page 181 (Memo #20096, May 21, 2020).

[36] Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2 (Memo #20096, May 21, 2020).

also be provided in any covered languages under Section 14201 and the VRA Section 203. (Sec. 14282(b).)"

- "Post Polling Place/Vote Center Locations: At least 14 days before an election, the county elections official shall provide information on the county elections website site identifying all county polling places and/or vote centers and the languages of facsimile copies of the ballot that will be available to voters at each location. Additionally, explanatory information pertaining to the list of polling places, but not the list itself, shall be available in all languages in which the county provides facsimile copies of the ballot. (Sec. 14201(d).)"
- "Mail/Distribute Facsimile Ballots to Vote-by-Mail (VBM) Voters: If a VBM voter lives within a precinct that requires facsimile ballots, he/she may request a facsimile ballot in their preferred facsimile ballot language, if that language is available in that precinct. (Sec. 13400(a).)"
- "Election Administration Plan (EAP) for VCA Counties: Through a process of public input and public hearings, the EAP is required to describe how the county will administer elections under the VCA and include their plans to educate and outreach to the public, including communities for which the county is required to provide language coverage under Section 14201 and the VRA Section 203. (See Sec. 4005(a)(10).) The draft, amended draft, and adopted final EAP shall be posted on the internet website of the county elections official in each language in which the county is required to provide language coverage under Section 14201 and the VRA Section 203 and the SOS website in an accessible format. (Sec. 4005(a)(10)(E)(iii).)"
- "Notices for Voters in VCA Counties: The county elections official shall deliver to each voter, with either the county VIG sent pursuant to Section 13303 or with the vote-by-mail ballot packet, a notice, translated in all languages required under subdivision (a) of Section 14201 and the VRA Section 203 that informs voters of all of the following:"
    - "An all-mailed ballot election is being conducted and each eligible voter will be issued a vote-by-mail ballot by mail."
    - "The voter may cast a vote-by-mail ballot in person at a vote center during the times and days, as specified, or on election day."
    - "No later than 7 days before the day of the election, the voter may request the county elections official to send a vote-by-mail ballot in a language other than English pursuant to the VRA Section 203 or a facsimile copy of the ballot printed in a language other than English pursuant to Section 14201. (Sec. 4005(a)(8)(B).)"
- "Facsimile Ballot Distribution for VCA Counties: Prior to every election, the county elections official shall determine if a voter has previously identified a preferred language other than English to the elections official or to the Secretary of State. If the voter's precinct is required to have a facsimile copy of the ballot in the voter's preferred language pursuant to Section 14201, the county elections official shall send via mail or email a facsimile copy of the ballot in that language. The voter shall receive the facsimile copy of the ballot before vote centers open. (Sec. 4005.6(b))."

- "Bilingual Poll Workers in VCA Counties: If a vote center is located in, or adjacent to, a precinct, census tract, or other defined geographical subsection required to establish language requirements under subdivision (c) of Section 12303 or the VRA Section 203, or if it is identified as needing language assistance through the public input process, then the county elections official shall ensure that the vote center is staffed by election board members who speak the required language. If the county elections official is unable to recruit election board members who speak the required language, alternative methods of effective language assistance shall be provided by the county elections official. (Sec. 4005(a)(6)(B)(i).)"
- "Ballot Drop Boxes: The drop box shall be clearly and visibly marked, as an "Official Ballot Drop Box," and provide specified information, in a manner prescribed by the county elections official, in all languages required under the VRA Section 203 and those languages applicable under Section 14201. (See California Code of Regulations, title 2, section 20132(f).)"
- "Toll-Free Voter Assistance Hotline in VCA Counties: This hotline must be maintained by the county and operational no later than 29 days before the day of the election until 5 p.m. on the day after the election and shall provide assistance to voters in all languages in which the county is required to provide voting materials and assistance under subdivision (a) of Section 14201 and the VRA Section 203. (Sec. 4005(a)(10)(I)(vii).)"
- "Facsimile Ballot Posting Requirements: For each required language under Section 14201, a minimum of two facsimile ballots must be provided with the ballot measures and ballot instructions. One must be made available to voters to take into the voting booth and use as a reference in casting their ballots privately and the other must be posted in a conspicuous location in the polling place or vote center. (Sec. 14201(a).)"
    - "For precincts where the single language minority group exceeds 20%, an additional two facsimile ballots must be made available to voters to take into the voting booth and use as a reference in casting their ballots privately. (Sec. 14201(b)(2).)"
    - "A sign must be posted near the index of registration to inform voters of the presence of facsimile ballots. (Sec. 14201(c)(3).)"
        - "The sign must be in English and in the facsimile ballot language(s) relevant to that polling place or vote center."
    - "If a voter requests a facsimile ballot that is available at the polling place or vote center, then the poll worker must provide it to the voter. (Sec. 14201(c)(2).)"
    - "At least one sign must be publicly posted indicating the languages other than English that are spoken by the poll workers at that polling place or vote center, if applicable."
        - "This information must be provided in all the languages other than English spoken by the poll workers. (Sec. 14200(g).)"

- "Bilingual poll workers must wear an item (e.g. name tag, button, etc.) which identifies non-English language(s) spoken by that specific poll worker. (Sec. 12303(c)(3).)"

"Additional Requirements for VCA Counties"

"Each vote center must provide facsimile ballots translated in all languages required in the jurisdiction under subdivision (a) of Section 14201. (Sec. 4005(a)(6)(C).)"

- "Report of Bilingual Poll Worker Recruitment: Within 150 days following each statewide general election, counties must provide the Secretary of State a report of bilingual poll worker recruitment, including the number of bilingual poll workers recruited that are fluent in each of the VRA Section 203 and 14201 languages. (Sec. 12303(c)(2)(A).)"[37]

D. Past Commission Decisions on Elections Law

The Commission has not received a prior test claim on Elections Code section 14201, its predecessor statute, or Secretary of State determinations under those statutes, but has heard and decided a number of Test Claims on elections law, which include several Decisions relevant to this Test Claim, as follows.

Fifteen Day Close of Voter Registration, 01-TC-15

On October 4, 2006, the Commission partially approved the *Fifteen Day Close of Voter Registration*, 01-TC-15 Test Claim.[38] The Commission determined that a statute that pushed the voter registration deadline back from the 29th day before an election to the 15th day before the election did not newly require activities, but rather increased the cost of preexisting activities by requiring county elections officials to perform them over a longer time period.[39] The Commission also determined that a statute that required county elections officials to include additional information in a preexisting notice newly required an activity because county elections officials had not previously been required to include that information in that notice.[40]

Permanent Absent Voters II (As Amended), 03-TC-11

On July 28, 2006, the Commission partially approved the *Permanent Absent Voters II*, 03-TC-11 Test Claim.[41] The Commission determined that expanding eligibility for permanent absent voter status to all voters went "beyond creating a higher level of service in an existing program, but

[37]Exhibit A, Test Claim, filed May 21, 2021, pages 175-179 (Memo #20096, May 21, 2020).

[38] Exhibit F (3), Commission on State Mandates, Excerpts from Decision on *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted on October 4, 2006, page 1.

[39] Exhibit F (3), Commission on State Mandates, Excerpts from Decision on *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted on October 4, 2006, pages 5-9.

[40] Exhibit F (3), Commission on State Mandates, Excerpts from Decision on *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted on October 4, 2006, pages 11-12.

[41] Exhibit F (2), Commission on State Mandates, Excerpts from Decision on *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted on July 28, 2006, page 1.

rather create[d] an entirely different program."[42] The Commission also determined that requiring related, additional information to be included in absentee ballot mailings was also newly requiring an activity.[43] However, the Commission also determined that requiring county elections officials to treat applications for absentee ballots as permanent absentee ballot requests was not newly requiring an activity, as county elections officials were already required to process permanent absentee ballot requests by a different statute.[44]

Post Election Manual Tally (PEMT), 10-TC-08

On July 25, 2014, the Commission partially approved the *Post Election Manual Tally (PEMT),* 10-TC-08 Test Claim.[45] At issue was a set of emergency regulations that temporarily imposed new standards and procedures for conducting post-election manual tallies of votes for narrow races in elections conducted at least partially on a mechanical, electromechanical, or electronic voting system.[46] The Commission found that determining the margin of victory, manually tallying a higher percentage of precincts in narrow elections according to specific standards and procedures, and including additional related information on a preexisting notice were all newly required activities because existing law had only required a one percent manual tally in all elections and did not require counties to determine the margin of victory or conduct a higher manual tally in close races.[47]

Vote by Mail Ballots: Prepaid Postage, 19-TC-01

On July 24, 2020, the Commission partially approved the *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01 Test Claim.[48] The Commission determined that requiring city and county elections officials to provide vote-by-mail voters with prepaid postage was newly requiring an

[42] Exhibit F (2), Commission on State Mandates, Excerpts from Decision on *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted on July 28, 2006, page 7.

[43] Exhibit F (2), Commission on State Mandates, Excerpts from Decision on *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted on July 28, 2006, page 8.

[44] Exhibit F (2), Commission on State Mandates, Excerpts from Decision on *Permanent Absent Voters II (As Amended)*, 03-TC-11, adopted on July 28, 2006, page 10. The Commission also determined that any increases in costs due to this statute were nevertheless reimbursable as costs attributable to the statute that expanded eligibility for permanent absent voter status. (*Ibid.*)

[45] Exhibit F (4), Commission on State Mandates, Excerpts from Decision on *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted on July 25, 2014, page 1.

[46] Exhibit F (4), Commission on State Mandates, Excerpts from Decision on *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted on July 25, 2014, page 1.

[47] Exhibit F (4), Commission on State Mandates, Excerpts from Decision on *Post Election Manual Tally (PEMT)*, 10-TC-08, adopted on July 25, 2014, pages 28-31.

[48] Exhibit F (5), Commission on State Mandates, Excerpts from Decision on *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted on July 24, 2020, page 1.

activity because existing law, which required election officials to provide vote-by-mail voters with identification envelopes, did not require those envelopes to have prepaid postage.[49]

Extended Conditional Voter Registration, 20-TC-02

On December 3, 2021, the Commission denied the *Extended Conditional Voter Registration*, 20-TC-02 Test Claim.[50] The Commission determined that requiring county elections officials to provide conditional voter registration and related provisional voting services at additional locations was not newly requiring an activity because county elections officials already had a preexisting duty to provide those services.[51]

III. Positions of the Parties

A. County of Los Angeles

The claimant alleges that Elections Code section 14201, as added by Statutes 1994, chapter 920 and as amended by Statutes 2017, chapter 845, and Memo #20096 impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514 on counties by requiring county election officials to provide mandatory language assistance in additional languages.[52]

According to the claimant, this requirement is new and imposes a higher level of service because prior to Memo #20096, the claimant had not been required to provide language assistance in Bengali, Burmese, Gujarati, Indonesian, Mongolian, and Telugu.[53]

The claimant asserts that Elections Code section 14201, as clarified in Memo #20096, constitutes a new program or higher level of service because (1) the language assistance activities it requires are unique to county elections officials and (2) these activities provide a governmental service to the public, similar to the activity that the Commission found to be a state-mandated program on local governments in its Decision on *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01.[54]

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[49] Exhibit F (5), Commission on State Mandates, Excerpts from Decision on *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted on July 24, 2020, page 9. However, the Commission also determined that this activity was not state-mandated, and therefore not reimbursable, with respect to certain discretionary elections or elections that the city or county chose not to consolidate. (Exhibit F (5), Commission on State Mandates, Excerpts from Decision on *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01 (July 24, 2020), pages 11-13.)

[50] Exhibit F (6), Commission on State Mandates, Excerpts from Decision on *Extended Conditional Voter Registration*, 20-TC-02, adopted on December 3, 2021, pages 1-3.

[51] Exhibit F (6), Commission on State Mandates, Excerpts from Decision on *Extended Conditional Voter Registration*, 20-TC-02, adopted on December 3, 2021, pages 5-17.

[52] Exhibit A, Test Claim, filed May 21, 2021, pages 9, 13-14, and 17.

[53] Exhibit A, Test Claim, filed May 21, 2021, page 13; Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022, page 2.

[54] Exhibit A, Test Claim, filed May 21, 2021, pages 13 and 18; Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022, page 2.

The claimant alleges that as a result of the test claim statutes and Memo #20096, it has spent $221,391.61 since August 20, 2020, and will incur an estimated total of $350,000 in increased costs in fiscal year 2020-21, to perform the following activities:[55]

- "Translat[ing] facsimile ballots, ballot instructions, and election materials in six additional languages pursuant to EC 14201(a), (b)(1), (g)(2) and Memorandum No. 20096, at paragraph 4."[56]
- "[T]ranslat[ing], provid[ing], and post[ing] on RR/CC's website a draft, amended draft, and adopted final Election Administration Plan under EC 14201(c)(1), (c)(2) and Memorandum No. 20096, at paragraph entitled "Poll Worker Training and Education.""[57]
- "[R]ecruit[ing] election workers who can speak one or more of the additional languages in vote centers as indicated in Memorandum No. 20096, at paragraph entitled "Bilingual Poll Workers," and paragraph entitled "Bilingual Poll Workers in VCA Counties.""[58]
- "[P]rovid[ing] information in additional languages to voters on RR/CC's website, including identifying all vote centers in the County and the language of facsimile ballots available at each vote center, and information pertaining to the list of vote centers under EC 14201(d) and Memorandum No. 20096, at paragraph entitled "Post Polling Place/Vote Center Locations"."[59]
- "[I]nclud[ing] text in additional languages in the County voter information guide pursuant to EC 14201(e) and Memorandum No. 20096, at paragraph "Include Polling Place/Vote Center Information in County Voter Information Guide.""[60]
- "[M]ail[ing] or distribut[ing] translated facsimile ballots or translated vote-by-mail (VBM) ballots in additional languages to VBM voters upon request under Memorandum No. 20096, at paragraph entitled "Mail/District Facsimile Ballots to Vote-by-Mail (VBM) Voters.""[61]
- "[T]ranslat[ing] notices as directed under Memorandum No. 20096, at paragraph entitled "Notices for Voters in VCA Counties.""[62]

[55] Exhibit A, Test Claim, filed May 21, 2021, page 14.

[56] Exhibit A, Test Claim, filed May 21, 2021, page 14.

[57] Exhibit A, Test Claim, filed May 21, 2021, page 14.

[58] Exhibit A, Test Claim, filed May 21, 2021, page 15.

[59] Exhibit A, Test Claim, filed May 21, 2021, page 15.

[60] Exhibit A, Test Claim, filed May 21, 2021, page 15.

[61] Exhibit A, Test Claim, filed May 21, 2021, page 15.

[62] Exhibit A, Test Claim, filed May 21, 2021, page 15.

- "[D]istribut[ing] translated facsimile ballots or translated VBM ballots in additional languages pursuant to Memorandum No. 20096, at paragraph entitled "Facsimile Ballot Distribution for VCA Counties.""[63]
- "[I]nclud[ing] information in additional languages to clearly and visibly mark a drop box as "Official Ballot Drop Box" and provide specified information in additional languages on drop boxes under Memorandum No. 20096, at paragraph entitled "Ballot Drop Boxes.""[64]
- "[M]aintain[ing] staff who can speak one or more of the additional languages to support the voter assistance hotline under Memorandum No. 20096, at paragraph entitled "Toll-Free Assistance Hotline in VCA Counties."."[65]
- "[P]ost[ing] facsimile ballots in additional languages to inform voters of presence of facsimile ballots under EC 14021(a), (b)(2), and Memorandum No. 20096, at paragraph entitled "Facsimile Ballot Posting Requirements"."[66]

The claimant further alleges that it hired temporary staff members and incurred $102,576.89 in additional costs, and utilized a contract vendor to provide translation services and incurred $118,814.71 in additional costs, from August 2020 to March 2021 to comply with the test claim statutes and Memo #20096.[67] The claimant states that it expects to continue to incur $1,047,000 in increased costs in complying with Memo #20096 in fiscal year 2021-22 and reasonably estimates increased costs of as much as $6,324,446 for fiscal year 2021-22 for all local agencies in the state to implement the alleged mandate.[68]

The claimant filed comments accepting the Draft Proposed Decision denying the Test Claim.[69]

B. Department of Finance

Finance recommends that the Commission examine the timeliness of the Test Claim under Government Code section 17551(c).[70]

Finance does not dispute the claimant's position that Memo #20096 required the claimant to provide elections materials and other language assistance activities in specified precincts in six

[63] Exhibit A, Test Claim, filed May 21, 2021, page 15.

[64] Exhibit A, Test Claim, filed May 21, 2021, page 16.

[65] Exhibit A, Test Claim, filed May 21, 2021, page 16.

[66] Exhibit A, Test Claim, filed May 21, 2021, page 16.

[67] Exhibit A, Test Claim, filed May 21, 2021, page 16.

[68] Exhibit A, Test Claim, filed May 21, 2021, page 17.

[69] Exhibit E, Claimant's Comments on the Draft Proposed Decision, filed August 3, 2022, page 1.

[70] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022, page 2.

additional languages or that claimant expects to incur increased costs of $350,000 in fiscal year 2020-21 and $1,047,000 in fiscal year 2021-22 for these activities.[71]

However, Finance challenges claimant's conclusion that these activities constitute a new program or higher level of service.[72] Specifically, Finance argues that like the activities the Commission addressed in its Decision on *Extended Conditional Voter Registration*, 20-TC-02, the activities at issue in this Test Claim were already required by existing law.[73] According to Finance, "[t]he activities that are the subject of this Test Claim were already required by Elections Code section 14201 and other elections related statutes, prior to the issuance of Memorandum 20096."[74]

Finance did not file comments on the Draft Proposed Decision.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency 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 programs or increased level of service…

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[75] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[76]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[77]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or

[71] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022, pages 1-2.

[72] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022, page 2.

[73] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022, page 2.

[74] Exhibit B, Finance's Comments on the Test Claim, filed January 31, 2022, page 2.

[75] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[76] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[77] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[78]

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[79]

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[80]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[81] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[82] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[83]

A. The Test Claim Was Not Timely Filed with Respect to Elections Code Section 14201 as Added and Amended by Statutes 1994, Chapter 920 and Statutes 2017, Chapter 845 but Was Timely Filed with Respect to Memo #20096.

Government Code section 17551(c) states that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183.1(c) of the Commission's regulations defines 12 months as 365 days.[84]

However, the Test Claim was neither filed within 365 days following the effective dates of the test claim statutes nor filed within 365 days of incurring increased costs as a result of those statutes. The Test Claim was not filed within 365 days following the effective dates of Statutes 1994, chapter 920 and Statutes 2017, chapter 845 because those statutes went into effect more

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[78] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

[79] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[80] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[81] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[82] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[83] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

[84] California Code of Regulations, title 2, section 1183.1(c).

than 26 years[85] and three years,[86] respectively, before this Test Claim was filed. The Test Claim was not filed within 365 days of incurring increased costs as a result of those statutes because the claimant was required to – and therefore presumptively did[87] – provide language assistance pursuant to Elections Code section 14201 as added and amended by the those statutes in connection with elections that occurred in 2018, three years before this Test Claim was filed.[88] Accordingly, the Test Claim was not timely filed with respect to Elections Code section 14201 as added and amended by Statutes 1994, chapter 920 or Statutes 2017, chapter 845.

However, the claimant declares that it first incurred costs relating to implementing Memo #20096 on August 20, 2020,[89] which is less than 365 days before the claimant filed this Test Claim on May 21, 2021. Accordingly, the Test Claim was timely filed with respect to Memo #20096.

B. Memo #20096 Does Not Mandate a New Program or Higher Level of Service on Counties and, Therefore, Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

The Commission finds, as described below, that Memo #20096 identifies the languages that met Elections Code section 14201's three percent threshold in certain precincts for elections taking place between May 21, 2020 and December 31, 2021, but does not mandate any new requirements on counties when compared to prior law.

[85] Statutes 1994, chapter 920 went into effect on January 1, 1995. (Cal. Const., art. IV, § 8(c).)

[86] Statutes 2017, chapter 845 went into effect on January 1, 2018. (Cal. Const., art. IV, § 8(c).)

[87] Evidence Code section 664 ("It is presumed that official duty has been regularly performed.").

[88] See Exhibit A, Test Claim, filed May 21, 2021, page 189 (California Secretary of State, County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148, December 29, 2017) (requiring precincts in the County of Los Angeles to provide Elections Code section 14201 language assistance in Armenian and Persian for elections conducted between January 1, 2018, and December 31, 2021); Elections Code sections 1200 and 1201 (requiring statewide elections to be held in June and November of 2018); see also Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022, page 2 ("Indeed, the County was already complying with minority language translations as required in Elections Code section 14201.").

[89] Exhibit A, Test Claim, filed May 21, 2021, page 23 (Declaration of Albert Navas, Assistant Registrar and County Clerk for the County of Los Angeles, para. 9, which states the following: "The County first incurred costs related to implementing the SOS' corrected methodology under EC 14201 on August 20, 2020.").

1. Memo #20096 Does Not Impose Any New State-Mandated Requirements When Compared To Existing Legal Requirements.

Courts have repeatedly held that local government entities are not entitled to reimbursement simply because a state law or order increases the costs of providing mandated services.[90] Rather, reimbursement under article XIII B, section 6 requires that the increased costs result from a new program or an increased level of service mandated by the state.[91] To determine whether a test claim statute or executive order mandates a new program or higher level of service, the requirements in the test claim statute or executive order are compared with the preexisting scheme.[92] The requirements are new if they did not exist prior to the enactment of the test claim statute or executive order.[93]

For example, in *San Diego Unified School District*, the court determined that the required activities imposed by 1993 test claim statutes, which addressed the suspension and expulsion of K-12 students from school, were "new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of [the 1993 test claim statutes]."[94] And in *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, the court found that installing and maintaining trash receptacles at transit stops and performing certain inspections were both *new duties* that local governments were required to perform, when compared to prior law.[95]

Here, unlike the situations addressed in *San Diego Unified School District* and *Department of Finance,* Memo #20096 does not mandate counties to perform any activities that are "new in comparison with the preexisting scheme."[96]

First, as claimant implicitly recognizes, it is Elections Code section 14201, not Memo #20096, that requires county elections officials to provide language assistance services upon the Secretary's determination of need:

> *EC 14201 requires* the County to comply with facsimile posting and availability requirements if there are three percent or more of voting-age residents in a precinct who are part of a "language minority group….

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[90] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877; *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[91] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[92] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

[93] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[94] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (see also page 869, footnotes 6 and 7, and page 870, footnote 9, where the court describes in detail the state of the law immediately before the enactment of the 1993 test claim statutes).

[95] *Department of Finance v. Commission State Mandates* (2021) 59 Cal.App.5th 546, 558.

[96] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

[¶]

Therefore the County … hereby submits this Test Claim (TC) seeking to recover its cost in performing the additional *mandated activities under EC 14201*, as clarified in Memorandum No. 20096.[97]

"[T]he usual rule with California codes is that "shall" is mandatory and "may" is permissive unless the context requires otherwise."[98] Here, the plain language of Elections Code section 14201 itself requires county elections officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide, through repeated use of the term "shall," as follows:

> (a) In counties and precincts where the Secretary of State has determined that it is appropriate, the county elections official *shall* provide facsimile copies of the ballot, as described in subdivision (b), with the ballot measures and ballot instructions printed in Spanish, one of which *shall* be posted in a conspicuous location in the polling place and at least one of which *shall* be made available for voters at the polling place to use as a reference when casting a private ballot. Facsimile ballots *shall* also be printed in other languages and provided in the same manner if a significant and substantial need is found by the Secretary of State….
>
> (b) (1) In determining if it is appropriate to provide the election materials in Spanish or other languages, the Secretary of State shall determine the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance. If the number of these residents equals 3 percent or more of the voting-age residents of a particular county or precinct, or if interested citizens or organizations provide the Secretary of State with information that gives the Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots, the Secretary of State shall find a need to provide at least two facsimile copies with the ballot measures and ballot instructions printed in Spanish or other applicable language in the affected polling places.
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> …

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[97] Exhibit A, Test Claim, filed May 21, 2021, page 13, emphasis added.

[98] *Walt Rankin & Associates, Inc. v. City of Murrieta (*2000) 84 Cal.App.4th 605, 614; see Elections Code section 354 ("'Shall' is mandatory and 'may' is permissive."). The Commission is not aware of any context that would require otherwise in this case; to the contrary, the use of "may" in subdivision (g) of the same section confirms that the use of "shall" in the quoted provisions of Elections Code section 14201 was intended to denote requirements (see *People v. Heisler* (1987) 192 Cal.App.3d 504, 507 ("where the Legislature has used both "shall" and "may" in the same section it must be presumed to have attached to them their ordinary meanings."), and, as described below, the Secretary of State has also interpreted these provisions as containing mandatory requirements (see e.g. Exhibit A, Test Claim, filed May 21, 2021, pages 175-178 (Memo #20096, May 21, 2020)).

(c) (1) In polling places where facsimile copies of the ballot are necessary, members of the precinct boards *shall* be trained on the purpose and proper handling of the facsimile copies of the ballot and *shall* be prepared to inform voters of the existence of the facsimile copies of the ballot, as appropriate.

(2) If a voter requests a facsimile copy of a ballot that is available in the voter's language of preference pursuant to subdivision (a), a member of the precinct board *shall* provide the facsimile copy of the ballot to the voter.

(3) In polling places where facsimile copies of the ballot are necessary, a sign near the roster *shall* inform voters of the existence of the facsimile copies of the ballot. The sign *shall* be in English and in the language or languages of the facsimile copies available in that polling place.

(d) At least 14 days before an election, the county elections official *shall* provide information on the county elections internet website identifying all polling places in the county and the languages of facsimile copies of the ballot that will be available to voters at each polling place. Explanatory information pertaining to the list of polling places, but not the list itself, *shall* be available in all languages in which the county provides facsimile copies of the ballot.

(e) The county elections official *shall* include text in the county voter information guide that refers voters with language needs to the portion of the county elections internet website containing the information specified in subdivision (d). The text *shall* be in all languages in which the county provides facsimile copies of the ballot. (Emphasis added.)

So, even though Memo #20096 specified the additional languages for which county elections officials were required to provide language assistance services by setting forth the Secretary of State's expanded determinations of need, it did not *itself* require or mandate county elections officials to provide those services. Rather, it was Elections Code section 14201 that required those officials to post facsimile ballots, provide specified information on the county elections website, and include translated text in the county voter information guide. These requirements have been imposed on counties since 2018.[99] All Memo #20096 did was to provide notice that these preexisting requirements in Elections Code section 14201 apply with respect to additional languages based on the three percent trigger.

Second, the plain language of Memo #20096 echoes this understanding of Elections Code section 14201. In that memo, the secretary describes his determinations as "adding fourteen new languages under the formula-based provisions of Section 14201"[100] and the required activities set forth in that memo as a "non-exhaustive list [] intended *as a summary of applicable requirements*."[101] This is not the language of a state official who is imposing newly required activities on local governments, but rather the language of a state official who is providing notice

[99] Elections Code section 14201, as amended by Statutes 2017, chapter 845.

[100] Exhibit A, Test Claim, filed May 21, 2021, page 174 (Memo #20096, May 21, 2020).

[101] Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2, (Memo #20096, May 21, 2020).

of the factual determination made as required under Section 14201, which triggers the requirement for certain counties to engage in a number of activities.

Third, although the claimant also claims costs for a number of activities that are not required by Elections Code section 14201, all of those activities are similarly imposed by preexisting law. Specifically, although the claimant alleges costs for posting its Election Administration Plan and providing vote-center-related information on its County Clerk/Registrar-Recorder's website, recruiting election workers, "translating notices as directed under Memorandum No. 20096, at paragraph entitled "Notices for Voters in VCA Counties,"" and maintaining staff to support a voter assistance hotline, those activities are required by Elections Code sections 4005 and 4007. Although the claimant alleges costs for mailing or distributing translating facsimile ballots or translated vote-by-mail ballots, that activity is required by Elections Code sections 4005.6 and 13400. And although the claimant alleges costs for including information on drop boxes, that activity is required by one of the Secretary's regulations, California Code of Regulations title 2, section 20132. None of these activities are required by Memo #20096, but simply mentioned in that memo as part of its "summary of applicable requirements."[102]

In sum, Memo #20096 identifies the languages that meet the three percent threshold under Elections Code section 14201, but does not mandate any new activities on counties. All of the activities that the claimant seeks reimbursement for are required by preexisting law, not Memo #20096, and therefore these activities are not "new in comparison with the preexisting scheme" and cannot constitute new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.

2. The Conclusion that Memo #20096 Does Not Mandate a New Program or Higher Level of Service Is Consistent With Those Reached in Prior Commission Decisions.

In prior elections-related test claims, the Commission has generally found that state elections statutes or executive orders that only increase the availability of, or population served by, existing programs do not require "new" programs or "higher" levels of service.

For example, in *Extended Conditional Voter Registration,* 20-TC-02, the Commission found that just expanding the locations at which conditional voter registration and related provisional voting must be provided, without expanding the times at which those services were required to be provided or requiring counties to open new locations for those services, was not requiring a "new" activity or "higher level" of service because county elections officials were already required to provide those services.[103] In *Fifteen Day Close of Voter Registration,* 01-TC-15, the Commission similarly found that a statute that pushed the voter registration deadline back from the 29th day before an election to the 15th day before the election did not newly require activities, but rather increased the cost of preexisting activities, as existing law already required

[102] Exhibit A, Test Claim, filed May 21, 2021, page 175 footnote 2, (Memo #20096, May 21, 2020).

[103] Exhibit F (6), Commission on State Mandates, Excerpts from Decision on *Extended Conditional Voter Registration*, 20-TC-02, adopted on December 3, 2021, page 16.

elections officials to perform the same voter registration activities that they would now have to provide over a longer time period.[104]

But in *Permanent Absent Voters II (As Amended)*, 03-TC-11, the Commission also found that expanding eligibility for permanent absent voter status from persons with specific conditions or disabilities to all voters went "beyond creating a higher level of service in an existing program, but rather create[d] an entirely different program."[105] And in *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, which claimant relies on here,[106] the Commission determined that requiring city and county elections officials to provide vote-by-mail voters with prepaid postage was newly requiring an activity because existing law, which required election officials to provide vote-by-mail voters with identification envelopes, did not require those envelopes to have prepaid postage.[107]

Similar to the requirements addressed in *Extended Conditional Voter Registration,* 20-TC-02, and *Fifteen Day Close of Voter Registration,* 01-TC-15, and unlike the requirement discussed in *Vote By Mail Ballots: Prepaid Postage*, 19-TC-01, there are no requirements imposed by Memo #20096. The requirements (including the requirement for the Secretary to make the determination) are imposed by section 14201 and to the extent there is a resultant increase in the reach of preexisting services, no new activities or new components to existing activities are required. Prior to Memo #20096, Elections Code section 14201 already required county elections officials to provide translated facsimile ballots and other language assistance in languages for which the Secretary of State determined there was a need. Memo #20096 complied with Elections Code section 14201 and simply identified the languages and precincts in which the already required services must be provided.

Consequently, the Commission's finding that Memo #20096 does not mandate a new program or higher level of service is consistent with conclusions that the Commission reached in prior elections-related test claims.

V. Conclusion

Based on the foregoing analysis, the Commission finds that the Test Claim was not timely filed with respect to Elections Code section 14201 as added by Statutes 1994, chapter 920 or as amended by Statutes 2017, chapter 845. The Commission further finds that Memo #20096 does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Accordingly, the Commission denies this Test Claim.

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[104] Exhibit F (3), Commission on State Mandates, Excerpts from Decision on *Fifteen Day Close of Voter Registration*, 01-TC-15, adopted on Oct. 4, 2006, pages 5-9.

[105] Exhibit F (2), Commission on State Mandates, Excerpts from Decision on *Permanent Absent Voters II (As Amended),* 03-TC-11, adopted on July 28, 2006, pages 6-7.

[106] Exhibit C, Claimant's Rebuttal Comments, filed March 1, 2022, page 2.

[107] Exhibit F (5), Commission on State Mandates, Excerpts from Decision on *Vote by Mail Ballots: Prepaid Postage*, 19-TC-01, adopted on July 24, 2020, page 9.