

1 NICHOLAS CLAIR, SBN 299097
2 CALIFORNIA SPECIAL DISTRICTS ASSOCIATION
3 1112 I Street, Suite 200
4 Sacramento, CA 95814
5 Telephone: (916) 442-7887

6 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF SACRAMENTO

8
9 Paradise Irrigation District,) Case No.: 34-2015-80002016
10 et al.,)
11 Petitioners,) CALIFORNIA SPECIAL DISTRICTS
12 v.) ASSOCIATION'S AMICUS CURIAE
13 Commission On State Mandates,) BRIEF IN SUPPORT OF
14) PETITIONERS' MOTION FOR
15 et al.,) PEREMPTORY WRIT OF
16 Respondents) ADMINISTRATIVE MANDAMUS
17)
18 Department of Water Resources,
19 Department of Finance, And Does
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21 11-20
22 Real Parties in
23 Interest
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25
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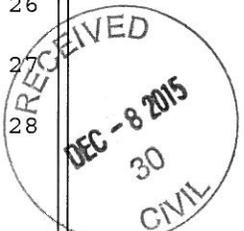


TABLE OF CONTENTS

1

2 INTRODUCTION AND STATEMENT OF INTEREST 1

3

4 ARGUMENT 2

5

6 I. Entities that Do Not Receive Ad Valorem Tax Revenue are Eligible

7 for Subvention..... 2

8 A. The Commission's Decision is not supported by *Fresno (1991)*... 2

9

10 B. The Voter Intent in Adopting Proposition 1A Does Not Support

11 Limiting Eligibility for Mandate Reimbursements to Only Those Local

12 Governments that Receive and Expend "Proceeds of Taxes" 5

13 C. Article XIII B Section 6 Must be Harmonized with the Other

14 Constitutional Provisions Regarding Local Government Finance in

15 Article XIII D 14

16 II. The Commission Improperly Failed to Address Whether Petitioners

17 Have Sufficient Fee Authority in Light of the Limitations Created by

18 Article XIII D..... 19

19 III. The Commission's Decision is Directly Contrary to the Policy

20 Underlying Article XIII B section 6..... 23

21

22 IV. Conclusion..... 28

23

24

25

26

27

28

1 **TABLE OF AUTHORITIES**

2 **Cases**

3 *Bighorn Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205..... 5, 6

4 *City of Huntington Beach v. Board of Administration* (1992) 4 Cal.4th 462... 14

5 *Connell v. Superior Court*, (1997) Cal.App.4th 382..... 19, 20, 22, 23

6 *Cooley v. Superior Court* (2002) 29 Cal.4th 228..... 14

7 *County of Fresno v. State of California* (1991) 53 Cal.3d 482..... 2, 3, 23, 24

8 *DeVita v. County of Napa* (1995) 9 Cal.4th 778..... 14

9 *DuBois v. Workers Compensation Appeals Board* (1993) 5 Cal. 4th 382..... 6

10 *Howard Jarvis Taxpayers Association v. City of Roseville* (2002) 97

11 Cal.App.4th 637..... 16

12 *People v Burkett* (1999) 21 Cal 4th 226..... 9

13 *Richmond v. Shasta Community Services District* (2004) 32 Cal.4th 409..... 5

14

15 **Statutes**

16 Government Code § 17556(d)..... 2, 19

17 Government Code § 17574..... 26

18 Government Code Section 17500 et seq..... 8

19

20 **Other Authorities**

21 California Ballot Pamphlet, General Election, November 2, 2004..... 10, 12, 13

22 *Discharge of Stormwater Runoff*, 07-TC-09, Mar. 26, 2010..... 20, 21

23 *Mandate Reimbursement Process II*, 05-TC-05, Jan. 29, 2010..... 26

24 Proposition 111 (1991)..... 3, 15, 16

25 Proposition 1A, Protection of Local Government Revenues (2004)... 3, 6, 10, 13

26 Proposition 218, Right to Vote on Taxes Act (1996)..... 3, 4, 20

27 *Water Conservation*, 10-TC-12, December 5, 2014..... 1, 9, 19, 20, 21, 24

28

1 **Constitutional Provisions**

2 Article XIII B Section (b) (4)..... 8

3 Cal Const. art. XIII B §6..... 2, 3, 4, 6, 7, 11, 12, 15, 18, 19, 21

4 Cal. Const. art. XII D §6(b) (1)..... 17

5 Cal. Const. art. XII D §6(b) (2)..... 17

6 Cal. Const. art. XII D §6(b) (5)..... 17

7 Cal. Const. art. XIII A..... 4, 14, 18

8 Cal. Const. art. XIII B..... 2, 4, 14, 16, 18

9 Cal. Const. art. XIII B, Section 8..... 11

10 Cal. Const. art. XIII D..... 1, 4, 5, 14, 18, 24, 27

11 Cal. Const., art. XIII B, Section 8(b)..... 15

12 Cal. Const., art. XIII D, §6(b) (5)..... 17

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1 The court's reasoning in *Fresno* was not based upon the
2 plain language of Article XIII Section 6 alone but on the
3 historical context and surrounding constitutional provisions
4 which limited the ability of local government entities to
5 collect revenue. (*Id.*) That is, the court limited the otherwise
6 broad language of Article XIII B Section 6 due to an
7 understanding that the voters intended to prevent the state from
8 burdening constitutionally limited local government revenues,
9 which the court identified as "tax" revenues.
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13 The "textual and historical context" which existed at the
14 time of the *Fresno* court's decision has since been substantially
15 altered. Proposition 111 (1991) made changes to various
16 provisions of Article XIII B. Proposition 1A, Protection of
17 Local Government Revenues (2004) expanded the mandate
18 reimbursement provisions in Article XIII B Section 6. Most
19 importantly, Proposition 218, Right to Vote on Taxes Act (1996)
20 added new, strict restrictions on the ability of local
21 governments to impose new or increased assessments and property
22 related fees and charges. Because the *Fresno* court's reasoning
23 relied on a "textual and historical context" that has been so
24 substantially altered in the nearly two decades since the
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1 court's decision, *Fresno* does not have continuing value as
2 guiding precedent.

3 The underlying reasoning of the *Fresno* decision, however,
4 supports the conclusion that local government entities which are
5 limited in raising assessments and property related fees and
6 charges by Article XIII D are eligible for subvention pursuant
7 to Article XIII B Section 6. The *Fresno* court reasoned that the
8 voters intended to protect local governments from state mandates
9 which burden local government revenues that were restricted by
10 the state constitution. Proposition 218 in 1996 created new
11 constitutional limitations on local government revenue sources.
12 Therefore, to the extent the unambiguous language of Article
13 XIII B Section 6 is limited by the underlying policy to protect
14 local government revenue sources which are subject to
15 constitutional limitations, subvention is required where a state
16 mandate burdens revenue sources subject to the limitations of
17 Article XIII D, in addition to those limited by Cal. Const. art.
18 XIII A and Article XIII B.

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1 B. The Voter Intent in Adopting Proposition 1A Does Not
2 Support Limiting Eligibility for Mandate
3 Reimbursements to Only Those Local Governments that
4 Receive and Expend "Proceeds of Taxes"
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7 The basic rules of constitutional interpretation have been
8 recently described by the California Supreme Court in two
9 unanimous decisions interpreting the provisions of Article XIII
10 D added to the Constitution by the passage of Proposition 218 in
11 1996. (*Bighorn Desert View Water Agency v. Verjil* (2006) 39
12 Cal.4th 205 and *Richmond v. Shasta Community Services District*
13 (2004) 32 Cal.4th 409.) As the Supreme Court stated in *Bighorn*:

14 When interpreting a provision of our State Constitution,
15 our aim is to determine and effectuate the intent of those
16 who enacted to constitutional provision at issue.
17

18 (*Richmond, supra*, 32 Cal. 4th at p. 418) When, as here,
19 voters enacted the provision, their intent governs. (*Delaney*
20 *v. Superior Court* (1990) 50 Cal. 3d 785, 798.) To determine
21 the voter's intent we begin by examining the constitutional
22 text, giving the words their ordinary meanings. (*Richmond,*
23 *supra*, at p. 418).
24

25 *Bighorn, supra*, at p. 212.
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1 The Supreme Court added the following:

2 In construing a constitutional or statutory provision, if
3 possible, significance should be given to every word,
4 phrase, sentence and part of an act in pursuance of a
5 legislative purpose. (*DuBois v. Workers Compensation*
6 *Appeals Board* (1993) 5 Cal. 4th 382.)
7
8 *Bighorn, supra*, at p. 212:

9
10 Proposition 1A added the following language to Article XIII
11
12 B Section 6 in 2004:

13 (b) (1) ... for the 2005-06 fiscal year and every subsequent
14 fiscal year, for a mandate for which the costs of a local
15 government claimant have been determined in a proceeding
16 fiscal year to be payable by the state pursuant to law, the
17 Legislature shall either appropriate in the annual Budget
18 Act, the full payable amount that has not been previously
19 paid, or suspend the operation of the mandate for the
20 fiscal year for which the annual Budget Act is applicable
21 in a manner prescribed by law
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24
25 b) (4) This subdivision applies to a mandate only as it
26 applies to a city, county, city and county or special
27 district
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1
2 (c) A mandated new program or higher level of service
3 includes a transfer by the Legislature from the state to
4 cities, counties, cities and counties or special districts
5 of complete or partial financial responsibility for a
6 required program for which the state previously had
7 complete or partial financial responsibility
8
9

10 Therefore, any appropriate constitutional analysis must
11 give significance to the following phrases: (1) "the Legislature
12 shall either **appropriate the full payable amount** that has not
13 been previously paid or **suspend the operation of the mandate...**;
14 and (2) a mandated new program or higher level of service
15 **includes a transfer by the Legislature from the state to cities,**
16 **counties, cities and counties or special districts of complete**
17 **or partial financial responsibility for a required program for**
18 **which the state previously had complete or partial financial**
19 **responsibility."** (Cal. Const., art. XIII B, Section 6.)
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24 Absent from this language is any mention of eligibility of
25 local governments to claim mandate reimbursement based on
26 whether such local government agencies receive and expend
27 proceeds of taxes in complying with such mandated programs.
28

1 Likewise, the mandate reimbursement implementation statutes at
2 Government Code Section 17500 et seq., fail to mention any
3 eligibility requirements for mandate reimbursement that require
4 local agencies to receive proceeds of taxes and expend those
5 proceeds of taxes in complying with state mandated programs as a
6 precondition for receiving reimbursement for costs expended on
7 state mandated programs. Article XIII B Section (b)(4) provides
8 that the mandate reimbursement provisions apply to a city,
9 county, city and county, or special district, but contains no
10 additional qualifying language regarding the requirement that
11 such local government agencies receive and expend proceeds of
12 taxes in paying state mandated program costs.
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15
16 Rather, the plain language indicates that all cities,
17 counties, cities and counties, and special districts are
18 eligible to submit claims for subvention, without restriction.
19 The plain language also mandates the state to appropriate the
20 "full payable amount" of costs incurred by local government in
21 complying with state mandated programs, without any
22 qualification as to the types of revenues that may be utilized
23 by local governments to pay the costs of such compliance. In
24 addition, the plain language is clear that if the Legislature
25 fails to appropriate the "full payable amount" in the annual
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1 Budget Act, that the operation of the mandate shall be suspended
2 for that fiscal year. Again, there are no words of limitation
3 indicating that suspension of mandates is only applicable to
4 those local government agencies which receive proceeds of taxes
5 and expend those proceeds of taxes in complying with state
6 mandated programs. In the absence of such limiting language, the
7 holding of the Commission's Decision is contradicted by the
8 mandate provisions of Proposition 1A, and is therefore incorrect
9 as a matter of law.
10
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12

13 Voter intent in adopting a constitutional amendment can be
14 ascertained by an examination of the Legislative Analyst's
15 Office summary of the provisions in the official ballot
16 pamphlet. (See *People v Burkett* (1999) 21 Cal 4th 226 for the
17 proposition that argument and analyses in an official ballot
18 pamphlet may be consulted to determine voter's understanding and
19 intent.) In the ballot pamphlet for the election at which
20 Proposition 1A was adopted (which included these amendments to
21 Article XIII B Section 6) the Legislative Analyst describes the
22 mandate provisions originally enacted in 1979.
23
24

25 The State Constitution generally requires the state to
26 reimburse local governments, school, and community college
27 districts when the state "mandates" a new local program or
28

1 higher level of service. For example, the state requires
2 local agencies to post agendas for their hearings. As a
3 mandate, the state must pay local governments, schools, and
4 community college districts for their costs to post these
5 agendas. Because of the state's budget difficulties, the
6 state has not provided in recent years reimbursements for
7 many mandated costs. Currently, the state owes these local
8 agencies about \$2 billion for the prior-year costs of
9 state-mandated programs. In other cases, the state has
10 "suspended" state mandates, eliminating both local
11 government responsibility for complying with the mandate
12 and the need for state reimbursements.

13
14
15 (California Ballot Pamphlet, General Election, November 2,
16 2004).

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18
19 The Legislative Analyst also described how Proposition 1A would
20 affect the mandate reimbursement process:

21 "The measure amends the State Constitution to require the
22 state to suspend certain state laws creating mandates in
23 any year that the state does not fully reimburse local
24 governments for their costs to comply with the mandates.
25 Specifically, beginning July 1, 2005, the measure requires
26 the state to either fully fund each mandate affecting
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28

1 cities, counties, and special districts or suspend the
2 mandate's requirements for the fiscal year."
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4
5 Therefore, Article XIII B Section 6 as amended by
6 Proposition 1A requires the State to either fully fund each
7 mandate in the fiscal year immediately following a determination
8 that a program constitutes such a mandate, or suspend the
9 mandate's requirements for that fiscal year, regardless of the
10 claimant's source of revenue. Neither Proposition 1A's
11 constitutional language, nor the Legislative Analyst's analysis,
12 uses any words of limitation or restriction to indicate that the
13 reimbursement or suspension of mandates is only applicable to
14 local governments that receive "proceeds of taxes," as that term
15 is defined in Cal. Const. art. XIII B, Section 8. The absence of
16 such language of limitation implies that no such limitations
17 were intended.
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21 "The measure also appears to **expand** the circumstances under
22 which the state would be responsible for carrying out new
23 state requirements. Specifically, the measure defines as a
24 mandate state actions that transfer to local governments
25 financial responsibility for a required program for which
26 the state previously had **complete or partial financial**
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1 **responsibility.** Under current law, some such transfers of
2 financial responsibilities may not be a state mandate."
3 (California Ballot Pamphlet, General Election, November 2,
4 2004. [Emphasis added.]
5

6
7 The Legislative Analyst's analysis of Proposition 1A in the
8 ballot pamphlet fails to mention any restriction or limitation
9 on the types of entities eligible for subvention, and the
10 analysis fails to mention any requirement that only entities
11 which receive and expend proceeds of taxes in complying with
12 such mandates are eligible for subvention. Rather, the analysis
13 of the Legislative Analyst's Office emphasizes that the
14 amendments to Article XIII B Section 6 by Proposition 1A **expand**
15 the circumstances under which the state is responsible for
16 reimbursing cities, counties and special districts for complying
17 with state mandated programs by including all programs for which
18 the state even had partial financial responsibility before such
19 transfer.
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24 The Commission's interpretation of the language of Article
25 XIII B Section 6 requiring that mandates, in order to be
26 reimbursable, must be funded only from proceeds of taxes, and
27 not other available revenue streams such as property related
28

1 fees and charges, is not mentioned at all in the Legislative
2 Analyst's analysis. Therefore, the voters who approved
3 Proposition 1A by 82% of the popular vote had no understanding
4 of the limitation on reimbursement of state mandates to local
5 governments which the Commission finds.
6

7
8 The ballot pamphlet's analysis of Proposition 1A indicates
9 that the purpose of Proposition 1A was to amend the State
10 Constitution to achieve three general objectives regarding state
11 and local government finance. (California Ballot Pamphlet,
12 General Election, November 2, 2004.) One of those objectives was
13 to restrict state authority to impose mandates on local
14 governments without reimbursement. (*Id.*) The ballot pamphlet
15 specifically states that "if the state does not fund a mandate
16 within any year, the state must eliminate local government's
17 duty to implement it for that same time period." (*Id.*)
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19
20 Therefore, the general purpose and intent of the voters was to
21 keep local government revenues local, and to prevent the state
22 from appropriating local revenues for state purposes, whether
23 through tax shifts, or mandated state programs requiring local
24 governments to fund state programs with local revenues without
25 reimbursement. The plain words of Proposition 1A support this
26 voter intent to require the state to fully reimburse unfunded,
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1 state mandated costs incurred by all cities, counties, cities
2 and counties, and special districts, not just those that receive
3 proceeds of taxes.
4

5
6 Therefore, the voters' intention in passing the Proposition
7 1A's amendments to the mandate reimbursement provisions does not
8 support the limitations on mandate reimbursement eligibility
9 specified in the Commission's Decision, which is therefore
10 invalid as a matter of law.
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13 C. Article XIII B Section 6 Must be Harmonized with the
14 Other Constitutional Provisions Regarding Local
15 Government Finance in Article XIII D
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18 A foundational rule of statutory and constitutional
19 construction provides that related provisions should be read
20 together and construed in a manner that gives effect to each,
21 yet does not lead to disharmony with other. (See *City of*
22 *Huntington Beach v. Board of Administration* (1992) 4 Cal.4th
23 462; *Cooley v. Superior Court* (2002) 29 Cal.4th 228; *DeVita v.*
24 *County of Napa* (1995) 9 Cal.4th 778.)
25

26 Therefore, the provisions of the California Constitution
27 Articles XIII A, B, C and D should be read together and
28

1 harmonized with Article XIII B, Section 6. As the Decision
2 points out, Articles XIII A and B deal with limitations on the
3 ability of local governments to raise tax revenue, and impose
4 restriction on certain appropriations of the proceeds of taxes
5 which are subject to limitation under Article XIII B. However,
6 Article XIII D also imposes significant restrictions on raising
7 and expending local government revenues including property
8 related fees and charges, and assessments.
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12 The appropriations limit in Article XIII B, the focus of
13 the Commission's analysis in its Decision, limits the ability of
14 local governments to expend proceeds of taxes levied by or for
15 the local government agency. Specifically, Article XIII B
16 defines "appropriations subject to limitation" which are those
17 expenditures of proceeds of taxes. (Cal. Const., art. XIII B,
18 Section 8(b).) The Commission's Decision ignores the significant
19 changes to the appropriations limit instituted by Proposition
20 111 in 1991. Article XIII B has always been construed as not
21 limiting all appropriations or expenditures of local government,
22 but only "appropriations subject to limitation" as defined by
23 Article XIII B, and as expanded by the provisions of Proposition
24 111. Proposition 111 created a number of exemptions from the
25 category of "appropriations subject to limitation." Among those
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1 exemptions are the following: (1) debt service; and (2) any
2 appropriations for capital expenditures, including deposits of
3 revenues into capital reserve funds for future capital outlay.
4 These exemptions from "appropriations subject to limitation"
5 created by Proposition 111 radically expand the category of
6 local government expenditures which are **not** subject to the
7 appropriations limit in Article XIII B.
8

9
10 The Commission's Decision places undue reliance on the
11 appropriations limit in Article XIII B, which is limited in its
12 effect after the amendments adopted by the passage of
13 Proposition 111, and totally ignores the more restrictive
14 provisions on the raising of and expenditure of property related
15 fees and charges specified in Article XIII D. Those limitations
16 are as follows:
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18

19 (1) Property related fees and charges for water, sewer, and
20 refuse collection services are subject to majority protest
21 procedures by property owners even though they are not
22 subject to election requirements; as are all other property
23 related fees.
24

25 (*See Howard Jarvis Taxpayers Association v. City of*
26 *Roseville* (2002) 97 Cal.App.4th 637.)
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28

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

6 (Cal. Const., art. XIII D §6(b)(5).)

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8
9 (3) Revenues derived from the property related fee may not
10 be used for any purpose other than that for which the fee
11 was imposed.

12 (Cal. Const. art. XII D §6(b)(2).)

13
14
15 (4) Revenues derived from property related fees may not
16 exceed the cost required to provide the property related
17 service.

18 (Cal. Const. art. XII D §6(b)(1)

19
20
21 (5) The amount of the property related fee may not exceed
22 the proportional cost of providing the public service to
23 each individual parcel subject to the fee.

24 (Cal. Const. art. XII D §6(b)(5).)

1 Analyzed together, all of these restrictions on the raising
2 and expenditure of property related fees and charges by local
3 government agencies specified in Article XIII D of the
4 Constitution severely limit the ability government agencies to
5 utilize revenue for property related fees and charges to fund
6 the costs of state mandated programs. Those restrictions are
7 more onerous and stringent than the restrictions imposed on
8 local government agencies in expending proceeds of taxes by
9 virtue of the appropriations limit in Article XIII B. Therefore,
10 Article XIII B Section 6 should be read to apply to all local
11 governments which face constitutional restrictions on their
12 ability to raise the revenues necessary to comply with state
13 mandates. The Commission's Decision creates an artificial
14 limitation on the broad plain language of Article XIII B Section
15 6 which acknowledges the restrictions placed on local government
16 revenues by Article XIII A but ignores the more onerous
17 restrictions created by Article XIII D.
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1 II. The Commission Improperly Failed to Address Whether
2 Petitioners Have Sufficient Fee Authority in Light of the
3 Limitations Created by Article XIII D
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6 The Commission's Decision relied on *Connell v. Superior*
7 *Court*, (1997) Cal.App.4th 382, for its analysis of the
8 constitutional limitations to Respondents' fee authority. In
9 *Connell* the public agencies acknowledged that they had authority
10 to levy fees to cover the costs of the mandated programs but
11 presented evidence that it would not be economically desirable
12 to do so. (*Id.* at p. 400-4001.) The court concluded that the
13 proper scope of inquiry was whether the agencies had "sufficient
14 authority" to levy the necessary fees and that economic
15 desirability of doing so was not relevant. (*Id.* at p. 401.)
16 Whether a public agency has "sufficient" fee authority, within
17 the meaning of Government Code § 17556(d) is a question of law.
18 (*Id.* at p. 399).
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23 The Commission holds in its Decision that whether the
24 majority protest provision of Article XIII D Section 6 is a
25 "legal barrier" to Petitioners' fee authority is either a legal
26 question which the Commission does not have the authority to
27 resolve or is a mixed question of fact and law which would
28

1 require further evidence to decide. The Commission does have
2 authority to resolve questions of law. It is worth noting,
3 however, that the Commission's assertion that the issue may be a
4 mixed question of fact and law is directly contrary to the
5 *Connell* decision on which it relies. The court in *Connell*
6 specifically held that whether an agency has sufficient fee
7 authority is a purely legal question. (*Connell, supra*, at p.
8 399.) The Commission has improperly attempted to inject a
9 factual component into a legal issue.
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11

12
13 The Commission's prior decision in *Discharge of Stormwater*
14 *Runoff*, 07-TC-09, Mar. 26, 2010 had held that "[t]he voting
15 requirement of Proposition 218 does not impose a mere practical
16 or economic hurdle, as in *Connell*, but a legal and
17 constitutional one." (*Discharge of Stormwater Runoff, supra*, at
18 p. 107.) Nevertheless, the Commission distinguishes this prior
19 ruling on the erroneous basis that the fees at issue here "are
20 expressly exempt from the voter approval requirements of
21 Proposition 218." (Decision at 78.) The Commission continues,
22 "[t]herefore, the Commission's earlier decision is
23 distinguishable on the very same ground that renders *Connell*
24 significantly poignant. The claimants cannot rely on the
25 unwillingness of voters to raise fees, because the fees in
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1 question fall...outside the voter-approval requirement of
2 article XIII D, section 6(c)." (*Id.*)
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4
5 Petitioners have already addressed the Commission's failure
6 to address those portions of the *Stormwater* decision which held
7 the fees subject only to that the "majority protest" provision
8 of Article XIII D Section 6 was a legal and constitutional
9 barrier to local government fee authority.¹ The Commission
10 appears to agree with the conclusion in the *Stormwater* decision
11 that an election necessary to impose new or increased taxes,
12 assessments, and fees and charges is a legal and constitutional
13 barrier to local government fee authority. The Commission
14 asserts that the majority protest process alone is not such a
15 constitutional hurdle as a matter of law because it is
16 "speculative and uncertain" and local government agencies
17 "cannot rely on the unwillingness of voters to raise fees" in
18 order to assert a lack of authority to raise fees. However, the
19 Commission fails to explain how the results of an election to
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24 _____
25 ¹ "Government Code, section 17556, subdivision (d), does not apply to
26 street sweeping because the fee is contingent on the outcome of a written
27 protest by a majority of the parcel owners. The plain language of subdivision
28 (d) of this section prohibits the Commission from finding that the permit
imposes "costs mandated by the state: if "The Local agency has the authority
to levy service charges, fees, or assessments sufficient to pay for the
mandated program or increased level of service." [Emphasis added.] Under
Proposition 218, the local agency has no authority to impose the fee if it is
protested by a majority of parcel owners." (*Discharge of Stormwater Runoff*,
07-TC-09, at p. 115. [Emphasis in original.]

1 approve new or increased fees are any less "speculative and
2 uncertain" than the results of a majority protest. The
3 Commission also did not address why asserting the majority
4 protest requirement creates a constitutional barrier to local
5 government fee authority is an attempt to "rely on the
6 unwillingness of voters to raise fees" but the same is not true
7 as to the election requirement. The Commission provided no
8 justification for the different treatment of elections and the
9 majority protest process. In both cases, the local government
10 entity has no authority to directly impose a new or increased
11 fee. In both cases the local government entity has no authority
12 beyond proposing a new or increased fee which cannot be imposed
13 absent approval for the agency's constituency. In both cases the
14 constitutionally required process itself, not unwilling voters,
15 divests the local agency of the "authority" to raise fees.
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19
20 Further, the Commission seems to rely on *Connell* for a
21 proposition not contained therein. As previously discussed,
22 *Connell* addressed a situation where a local government agency
23 unquestionably had fee authority but asserted that a practical,
24 economic barrier divested the agency of "sufficient" fee
25 authority. (*Connell, supra*, at 400-4001.) *Connell* stands for the
26 proposition that whether an agency has fee authority is a
27
28

1 question of law not dependent on the factual practical
2 circumstances of an agency; the issue is quantitative, not
3 qualitative. (*Id.*) The Commission seems to misconstrue this
4 holding as supporting the proposition that the "unwillingness of
5 voters to raise fees" is not a legal barrier to an agency's
6 fee authority. However, Petitioners have not asserted that
7 constituents are unwilling to raise fees, but rather that the
8 procedural requirements of Article XIII D Section 6 are a legal
9 and constitutional restraint on local agency fee authority, a
10 position which the Commission agreed with in its earlier
11 *Stormwater* decision and which the Commission seems to continue
12 support in the present decision, at least as far as fees which
13 are subject to approval by election.
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18 The Commission thus has failed to address whether
19 Petitioners have sufficient fee authority in light of the
20 limitations contained in Article XIII D.
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23 **III. The Commission's Decision is Directly Contrary to the**
24 **Policy Underlying Article XIII B section 6**
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26 As discussed, the Commission's reliance on *Fresno* (*supra*,
27 (1991) 53 Cal.3d 482) wholly fails to analyze the impact of
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1 subsequent constitutional amendments. In doing so, the
2 Commission created a new threshold requirement that a local
3 government agency must meet in order to qualify for subvention.
4 Further the Commission has failed to address whether local
5 government agencies have sufficient fee authority in light of
6 the limitations of Article XIII D, Section (6) to raise fees to
7 cover the costs of state mandated programs, leaving many local
8 agencies faced with the prospect of being unable to gain
9 approval for new fees but still required to comply with state
10 mandates.
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14 The purpose of the mandate reimbursement provision is to,
15 "preclude the state from shifting financial responsibility for
16 carrying out governmental functions onto local entities that
17 were ill equipped to handle the task." (*Fresno, supra*, 53 Cal.3d
18 at p. 487.) Nevertheless, the Commission held that "any local
19 government entity funded exclusively through user fees, charges,
20 or assessments, [is] per se ineligible for mandate
21 reimbursement." (Decision at p. 34.). This creates a class of
22 local government entities onto which the state is free to shift
23 responsibility and financial burdens for carrying out
24 governmental functions.
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1 The Commission's Decision encourages the state to impose
2 costly programs on local governments that collect fee revenue.
3 For example, as the present test claim illustrates, the state
4 would be able to achieve many policy goals related to water
5 supplies and water quality by shifting the entire financial
6 responsibility for implementing programs onto local governments,
7 so long as those government entities do not currently collect
8 and expend tax revenues or had some fee authority available
9 regardless of whether the fee authority requires compliance with
10 Proposition 218. When local government entities propose the new
11 or increased fees necessary to comply with the additional costs
12 of the new state mandates, it is the local officials that will
13 bear the political consequences for decisions made by the state.
14 As local government agencies are increasingly required to
15 request their ratepayers to pay new or increased fees in order
16 to comply with state mandates, those ratepayers will be more
17 likely to reject those requests thus increasing the financial
18 pressures on local governments.
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24 If a local government entity proposes new or increased fees
25 in order to comply with state mandates which are rejected by a
26 majority of landowners, the local government entity would be
27 forced to undergo the costly and time consuming test claim
28

1 process. The test claim process itself has been determined to be
2 a state mandate by the Commission (Mandate Reimbursement Process
3 II, 05-TC-05, Jan. 29, 2010.) although no appropriation has been
4 made for subvention. This assumes, of course, that the local
5 government entity has not been deemed by the Commission as per
6 se ineligible to seek a mandate reimbursement because of the
7 agency's failure to seek a portion of property taxes.
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10 Further, Government Code § 17574 generally provides that
11 local agencies must file a test claim within 12 months of the
12 effective date of a statute or executive order, or within 12
13 months of incurring increased costs as a result of a statute or
14 executive order, whichever is later. Nothing in that section
15 provides for tolling the test claim statute of limitations while
16 the agency attempts to raise fees making it more likely that
17 local government agencies will fail to submit timely claims.
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21 Finally, the Commission has determined that in order for it
22 to make "findings that the claimants' fee authority has been
23 diminished, or negated, ...the claimants would have to provide
24 evidence that they tried and failed to impose or increase the
25 necessary fees..." This reasoning assumes that fee authority is
26 not diminished by the existence of the majority protest
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1 requirements in Article XIII D *until* that process results in an
2 actual failure to raise fees. The Commission could additionally
3 determine that if a majority protest prevents a local government
4 entity from raising fees that there is still no barrier to the
5 agency's fee authority because the agency could re-introduce the
6 proposed new or increased fees and that a second majority
7 protest preventing the new fees remains "speculative and
8 uncertain." In practical effect, the Commission's analysis could
9 be extended to prevent a local agency from ever being reimbursed
10 for state mandated costs.
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13 Special districts face a number of constraints on financing
14 the services they provide to communities. Districts do not have
15 general police powers or the ability to unilaterally impose new
16 or increased property related fees. The revenues that Districts
17 have access to are generally all subject to the strict
18 constitutional restrictions contained in Articles XIII A, B, C,
19 and D. Because of these financial restraints, the mandate
20 reimbursement provision of Article XIII B Section 6 is vitally
21 important to protect these local government entities from being
22 forced to carry the financial burden of state policies. The
23 Commission's decision creates a class of special districts,
24 distinguished only by the fact that they do not currently
25 collect or expend tax revenues, which fall completely outside
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1 the mandate reimbursement process and, thus, are forced to take
2 on the financial burdens of state programs without even the
3 ability petition the Commission for relief if their constituents
4 refuse to approve new or increased fees. To those districts
5 which do currently collect tax revenue, the Commission's
6 Decision instructs that these districts should first ask their
7 constituents to impose the cost of new state mandated programs
8 upon themselves before the Commission will consider requiring
9 the state to fulfill its constitutional duty to reimburse local
10 governments for the costs of new state mandated programs, based
11 upon the erroneous reasoning that whether a local government
12 agency has "authority" to raise fees is a mixed question of law
13 and fact. The Commission's decision will result in substantial
14 burdens for local governments and an incentive for the state to
15 achieve policy goals by shifting the cost to local governments.
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19 20 **IV. Conclusion**

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23 For the foregoing reasons, CSDA urges this court to
24 recognize the purpose of the subvention requirement which is to
25 prevent the state from shifting the financial burden of new
26 programs onto *all* local governments due to the restrictions on
27 revenue contained in the constitution, recognize that the
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1 Commission failed to proceed in the manner required by law, and
2 issue a peremptory writ of mandate as requested in the
3 Petitioner's Petition.
4

5 Respectfully Submitted,

6 Dated: December 8, 2015

CALIFORNIA SPECIAL DISTRICTS
ASSOCIATION

7
8 By: 
9 NICHOLAS CLAIR
10 CALIFORNIA SPECIAL DISTRICTS
11 ASSOCIATION
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