SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

PARADISE IRRIGATION DISTRICT, et al.,	Case Number: 34-2015-80002016
v.	**TENTATIVE RULING**
COMMISSION ON STATE MANDATES, et al.,	Date: February 5, 2016 Time: 9:30 a.m. Dept.: 29 Judge: Timothy M. Frawley
DEPARTMENT OF WATER RESOURCES, et al.	

Proceeding: Petition for Writ of Mandate

Tentative Ruling: Denied

Article XIII B, § 6, of the California Constitution requires reimbursement to local governments for any "new program or higher level of service" mandated by the State. A local government initiates the process for reimbursement under article XIII B, section 6, by filing a "test claim" with the Commission on State Mandates. The Commission must then determine whether a state mandate exists and, if so, the amount of reimbursement due the local entity.

This case challenges a decision of the Commission denying consolidated test claims seeking reimbursement for costs incurred by urban and agricultural water suppliers to comply with the Water Conservation Act of 2009 and implementing regulations.

The Commission found that two of the named claimants – namely, Richvale Irrigation District and Biggs-West Gridley Water District – are not eligible to claim reimbursement

because they are not subject to the taxing and spending limitations imposed by California Constitution articles XIII A and XIII B. As to the remaining claimants, the Commission found the costs incurred by the agencies are not reimbursable because the agencies have sufficient authority to pass the costs onto parcel owners through increased fees or charges for water service. Petitioners (supported by "Friend of the Court" California Special Districts Association) challenge both of these findings. The petition is opposed by the Commission, the Department of Water Resources, and the Department of Finance.

While the court agrees with Petitioners that the Commission abused its discretion in dismissing the test claims of Richvale and Biggs-West, the court shall deny the petition because Petitioners have failed to show they incurred reimbursable state-mandated costs.

Background Law

Overview of Restrictions on Taxation and Spending

In 1978, the voters adopted Proposition 13, adding article XIII A to the California Constitution.[1] Section 1 of the act curbed the power of cities, counties, and special districts to levy *ad valorem* real property taxes. It limited the maximum amount of any *ad valorem* tax on real property to one percent of the property's full cash value. It also reduced property taxes by rolling back the assessed value of real property to the value shown on the 1975-76 tax rolls, and restricting annual increases to an inflation factor, not to exceed 2% per year. It prohibited reassessment of a new base year value except in cases of purchase, new construction, or change in ownership. (Cal. Const., Art. XIII A, §§ 1, 2.)

To prevent the imposition of new taxes to make up for the decrease in real property tax revenues, the act prohibited new *ad valorem* real property taxes and new sales or transaction taxes on the sale of real property. It also imposed additional restrictions on state and local taxes. Article XIII A, Section 3 restricted state taxes by prohibiting any change in state taxes "enacted for the purpose of increasing revenues" unless approved by not less than two-thirds of the members of the Legislature. Article XIII A, Section 4 imposed a similar restriction on local taxes, requiring that special taxes be approved by a two-thirds vote of the electorate. (Cal. Const., Art. XIII A, §§ 3, 4.)

[1] Proposition 13 was not the first legislation to limit the ability of government to levy taxes. For example, several years earlier the State had enacted the Property Tax Relief Act of 1972 with the intent to limit the ability of local agencies and school districts to levy taxes.

In 1979, in the wake of Proposition 13, California voters enacted Proposition 4 to limit the growth of government spending. Commonly known as the "Gann Limit," Proposition 4 added Article XIII B to the California Constitution, placing limits on government appropriations of the proceeds of taxes. (Cal. Const., Art. XIII B, § 1.)

In 1980, California enacted legislation to further implement the limits on appropriations established by Article XIII B. (Cal. Gov. Code § 7900 *et seq*.) Taken together, the sections explain and define the state and local government appropriation limits and the appropriations subject to limitation.

In 1986, voters enacted Proposition 62, placing still more restrictions on local taxes. (Cal. Gov. Code 53720 *et seq*.) Proposition 62 classifies all taxes as either special (imposed for specific purposes) or general (imposed for general governmental purposes). Proposition 62 restated that special taxes must be approved by a two-thirds vote, and added the requirement that local general taxes must be approved by a majority vote.

In 1996, voters adopted Proposition 218, which added the Right to Vote on Taxes Act (Articles XIII C and XIII D) to the California Constitution. Article XIII C reiterated the requirements of Proposition 62, making them part of the Constitution, while also making clear that the restrictions apply to taxes imposed by charter cities.

Article XIII D restricted local power to levy assessments and to impose new or increased property-related fees and charges. Article XIII D generally requires local governments to obtain voter approval for new or increased assessments, which is a levy or charge on real property for a special benefit conferred on that property. Under Article XIII D, an assessment imposed on a parcel or property must be proportional to, and no greater than, the special benefit conferred on the parcel. (Cal. Const., Art. XIII D, § 4.)

Property-related fees and charges are subject to similar restrictions. Under Article XIII D, property-related fees or charges (including charges for property-related services) must meet all of the following requirements: (1) revenues derived from the fee or charge must be used for the purpose for which the fee or charge was imposed, and must be less than or equal to the funds required to provide the property-related service; (2) the amount of the fee or charge must not exceed the proportional cost of the service attributable to the parcel; (3) the service for which the fee or charge is imposed must actually be used by, or available to, the owner of the property; and (4) the fee or charge may not be imposed for general governmental services. (Cal. Const., Art. XIII D, § 6(b).)

New or increased fees and charges are subject to voter approval at two stages. First, local governments must give notice and conduct a public hearing on the proposed fee or charge. If a majority of owners protest against the proposed fee or charge, the fee or charge cannot be imposed. (Cal. Const., Art. XIII D, § 6.) Second, except for fees or charges for sewer, water, and refuse collection services, a proposed fee or charge must be submitted to and approved by a majority vote of the affected property owners or by a two-thirds vote of the electorate residing in the affected area. (*Ibid*.)

Proposition 218 buttressed Proposition 13's limitations on property taxes and special taxes by incorporating restrictions on local taxes and by imposing new restrictions on special assessments and property-related fees and charges. (See *Apartment Association of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830, 837.) Together, Proposition 13 and 218 affect taxes, as well as most property-related assessments, fees, and charges. However, they do not materially affect other compulsory fees and charges (such as regulatory fees and user fees), which are not imposed as an incident of property ownership.

Following the enactment of Propositions 13 and 218, there was concern that local governments were disguising new taxes as "fees" to raise revenue without complying with the constitutional restrictions. Thus, in order to ensure the effectiveness of the existing constitutional limitations, in 2010, the voters adopted Proposition 26.[2] The measure amended and broadened the definition of "tax" in Article XIII A and XIII C to mean "any levy, charge, or exaction of any kind imposed by the State," except:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

[2] Proposition 26 is not retroactive; it does not apply to legislation enacted before its effective date (November 3, 2010.)

(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law. (Cal. Const., Art. XIII A, § 3(b); Art. XIII C, § 1(e).)

Proposition 26 also shifted to the State or local government the burden of demonstrating that a levy, charge, or other exaction is not a tax. (*Ibid*.) In this manner, Proposition 26 attempts to ensure that government cannot circumvent the constitutional restrictions on "taxes" simply by referring to them as "fees."

Reimbursement for Unfunded State Mandates

As laws were enacted to limit government taxation and spending, additional laws were enacted to prevent the State from shifting the cost of governmental programs from the State to local agencies. This was accomplished primarily by requiring the State to compensate local governments for mandated state costs.

The concept of reimbursement originated with the Property Tax Relief Act of 1972, generally known as "SB 90." The chief purpose of SB 90 was to limit the authority of local agencies and school districts to levy taxes. However, to offset those limitations, SB 90 required the State to reimburse local governments for the cost of unfunded state mandates. (See *City of Sacramento v. California* (1984) 156 Cal.App.3d 182, 188, overruled on other grounds in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

In 1975, the State created a statutory process for reviewing unfunded mandate claims. The legislation authorized the State Board of Control to conduct hearings and decide whether local agencies should be reimbursed for costs mandated by the State. The statutory process was codified in Revenue and Taxation Code, Section 2201 *et seq*.

Former Revenue and Taxation Code Section 2231(a) provided that the State "shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207." Former Section 2207, in turn, defined such costs as "any increased costs which a local agency is required to incur as a result of . . . [any] law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing

program . . . ."[3] (*County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, 571; see also *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 57-58.)

In 1979, with the adoption of Proposition 4, the voters added Article XIII B, Section 6, which superseded SB 90 and provided constitutional support for the prohibition of unfunded mandates. Article XIII B, Section 6 was based on the process established by SB 90. (See *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736-737.) Section 6 provides:

> 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 program or increased level of service . . . . (Cal. Const, Art. XIII B, § 6.[4])

Under Section 6, the Legislature is not required to provide subvention of funds for (i) legislative mandates requested by the local agency, (ii) legislation defining a crime, (iii) legislation enacted prior to January 1, 1975 (or regulations implementing such legislation), and (iv) legislation within the scope of California Constitution, Article I, Section 3(b)(7).

Section 6 was included in recognition that Article XIII A and B severely restricted the taxing and spending powers of local governments. (See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) The provision was intended to preclude the State from shifting financial responsibility for governmental programs onto local entities that were "ill equipped to handle the task." (*Ibid*.) The concern which prompted Article XIII B, Section 6 was the perceived attempt by the State to shift to local agencies the fiscal responsibility for providing public services. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.) In the ballot arguments, the proponents of Article XIII B explained to the voters: "Additionally, this measure: . . . Will not allow the state government to force programs on local governments without the state paying for them." (*Ibid*.)

In 1984, the Legislature enacted Government Code Sections 17500 through 17630 to implement Article XIII B, Section 6. The legislation created the Commission on State

[3] In 1989, the Legislature repealed former Section 2207.

[4] In 2004, Proposition 1A amended this language to eliminate the word "such." As amended, Section 6 provides: "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 that local government for the costs of the program or increased level of service . . . ."

Mandates to replace the State Board of Control as the quasi-judicial body charged with resolving state mandate claims. (Cal. Gov. Code § 17525; see also *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331.) Under the legislation, the Commission is vested with exclusive authority to hear and decide claims that a local government is entitled to reimbursement for "costs mandated by the state" under Article XIII B, Section 6. (Cal. Gov. Code § 17525.)

A local government initiates the process for reimbursement by filing a "test claim" with the Commission. The Commission then must determine whether a state mandate exists and, if so, the amount of reimbursement due the local entity. (Cal. Gov. Code §§ 17551, 17557, 17558.) Judicial review of the Commission's decision is available through a petition for writ of mandate under Code of Civil Procedure section 1094.5. (*Kinlaw, supra*, 54 Cal.3d at p.332; Cal. Gov. Code § 17559.)

The legislation defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur . . . as a result of any statute . . . or any executive order implementing any statute . . . , which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Cal. Gov. Code § 17514.) However, in Section 17556 subdivision (d), the Legislature declared that the Commission shall not find costs to be 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." (Cal. Gov. Code § 17556(d).)

In 2004, voters adopted Proposition 1A. Among other things, the Proposition added subdivisions (b) and (c) to Article XIII B, Section 6. (Cal. Const., Art. XIII B, § 6 (b) and (c).)

Background Facts and Procedure

The test claim at issue in this writ proceeding arises from the Water Conservation Act of 2009 and its implementing regulations (the Agricultural Water Measurement regulations). (See Cal. Water Code §§ 10608-10608.64 and 10800-10853; 23 C.C.R. § 597-597.4.) The test claim statutes and regulations (collectively, the "test claim statutes") require large agricultural water suppliers to implement "critical" water management practices, including measuring the volume of water delivered to customers and adopting a pricing structure based at least in part on the quantity of water delivered, as well as other cost effective and technically feasible management practices.[5] (Cal.

[5] Large suppliers are those serving 25,000 or more irrigated acres.

Water Code § 10608.48.) The test claim statutes also subject large agricultural water suppliers to new agricultural water management plan requirements. (*Ibid*.) In addition, urban water suppliers must comply with new urban water management plan requirements and achieve mandatory water conservation goals.

On June 30, 2011, Petitioners Richvale Irrigation District, Biggs-West Gridley Water District, Paradise Irrigation District, and South Feather Water and Power Agency filed a test claim with the Commission contending that the Water Conservation Act contained reimbursable state mandates. On February 28, 2013, Petitioners Richvale and Biggs-West filed a second test claim challenging the implementing regulations. The two test claims were consolidated for analysis and hearing.

Prior to the hearing on the merits, the Commission determined that Richvale and Biggs-West were ineligible to claim reimbursement for state-mandated costs because they did not currently receive any "tax" revenue. Thus, the Commission gave notice that it intended to dismiss their test claim unless other local agencies agreed to substitute in as claimants in their place. Petitioners Oakdale Irrigation District and Glenn-Colusa Irrigation District agreed to substitute in, and were accepted as the claimants in Test Claim 12-TC-01 in place of Richvale and Biggs-West.

In December 2014, after Commission staff issued a Proposed Decision recommending denial of the test claims, the Commission held its hearing on the test claims. The Commission received evidence and heard arguments from the claimants, Commission staff, the Department of Water Resources, the California Special Districts Association, and the California State Association of Counties. After hearing, the Commission voted to adopt the Proposed Decision as its Decision, denying the test claims.

In its Decision, the Commission concluded that reimbursement is not required. The Commission determined that most of the challenged code sections and regulations do not impose new mandated activities. Further, even if the statutes and regulations impose new state-mandated activities, the costs incurred to comply with those requirements are not costs mandated by the State because the claimants have authority to charge fees sufficient to cover such costs, defeating their claim of a reimbursable mandate. The Commission also affirmed that Richvale and Biggs-West are not eligible to claim reimbursement because they do not collect or expend tax revenue.

In response to the Commission's Decision, Petitioners filed their Petition for Writ of Administrative Mandamus. Petitioners contend that the Commission abused its discretion by concluding that the petitioning local agencies have sufficient fee "authority" to pay for the costs of the new mandates. Petitioners argue that the procedural

limitations of Proposition 218 – in particular, the "majority protest" provisions – divested local agencies of "authority" to establish or increase property-related fees or charges. Petitioners argue that the Commission cannot require local agencies to "try and fail" to impose new or increased fees or charges before seeking subvention.

Petitioners also challenge the Commission's determination that Richvale and Biggs-West are not eligible to claim reimbursement because they do not collect or expend property tax revenue. Petitioners contend that the Commission has added a new eligibility requirement for subvention which violates the unambiguous constitutional language providing that subvention is available to "any local government."

Standard of Review

The court must determine whether the Commission proceeded without, or in excess of, jurisdiction; whether the parties received a fair hearing; and whether there was a prejudicial abuse of discretion. (Code Civ. Proc. § 1094.5) Abuse of discretion is established if the Commission did not proceed in the manner required by law, its order or decision is not supported by the findings, or the findings are not supported by the evidence. (*Ibid*.)

The Commission's factual findings are reviewed under the substantial evidence test. (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1194-1195; Cal. Gov. Code § 17559.) Under the substantial evidence test, the court does not reweigh the evidence, views the evidence in the light most favorable to the Commission's findings, and indulges all reasonable inferences in support thereof. (*Camarena v. State Personnel Bd*. (1997) 54 Cal.App.4th 698, 701; *Hosford v. State Personnel Bd*. (1977) 74 Cal.App.3d 302, 306-07.) The court may not overturn a finding of fact simply because a contrary finding would have been more reasonable. (*Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 94; *Wilson v. State Personnel Bd*. (1976) 58 Cal.App.3d 865, 870.)

However, in addition to examining whether the Commission's findings are supported by substantial evidence, the court must determine whether the Commission committed any errors of law. The court must independently assess pure questions of law. (*Jenron Corp. v. Dept. of Social Services* (1997) 54 Cal.App.4th 1429, 1434.) The determination of whether a statute or regulation imposes a reimbursable state mandate is a question of law, as is the interpretation of a statute or constitutional provision. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109; *State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 558.)

While an agency's interpretation of the meaning and legal effect of a governing law is entitled to consideration and respect, agency interpretations are not binding or authoritative. (*Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1264.) It is the duty of the courts to state the true meaning of the law finally and conclusively, even if this requires the courts to overturn an erroneous administrative construction. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

The weight accorded to an agency's interpretation is "fundamentally situational," and turns on a "legally informed, commonsense assessment of [its] contextual merit." (*Bonnell, supra*, 31 Cal.4th at p.1264.) Depending on context, the agency's interpretation may be helpful, enlightening, or convincing. Other times, it may be of little worth. (*Yamaha, supra,* 19 Cal.4th at pp.7-8.)

In determining how much weight to give an agency interpretation, courts must analyze two broad categories of factors: those indicating that the agency has a comparative interpretive advantage over the courts, and those indicating that the interpretation in question is probably correct. (*Id*. at p.12.) In the first category are factors indicating the agency has special expertise or technical knowledge, especially where the legal text to be interpreted is technical, complex, or entwined with issues of fact, policy, and discretion. (*Ibid*.) In the second category are factors suggesting that the agency gave careful consideration to its interpretation (such as adoption of a formal interpretive rule under the APA), factors indicating that the agency's interpretation was adopted contemporaneous with the legislative enactment being interpreted, and factors showing that the agency has consistently maintained the interpretation over time. (*Id*. at pp.12-13.)

Whatever the force of administrative construction, final responsibility for the interpretation of the law rests with the courts. (*State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 820.)

In interpreting the scope of a constitutional provision, courts apply the same principles that govern statutory construction. The court's fundamental task in construing a law is to determine and effectuate the intent of those who enacted it. To determine intent, the reviewing court turns first to the language of the provision, giving the words their usual and ordinary meanings. When the language is clear and unambiguous, there is no need for construction and courts should not indulge in it. (*Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 905-906; *Arden Carmichael, Inc. v. County of Sacramento* (2000) 79 Cal.App.4th 1070, 1075.) If the words are ambiguous and open to more than one meaning, the court may refer to extrinsic indicia of the intent, such as

the legislative history of the measure and its impact on public policy. (*Morgan, supra*, 223 Cal.App.4th at pp.905-06; see also *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.)

Discussion

Petitioners contend the Commission's Decision constitutes an abuse of discretion in the following two respects. First, the Commission erroneously determined that Richvale and Biggs-West are not eligible to claim reimbursement because only local agencies that collect and spend "proceeds of taxes" are entitled to claim reimbursement for state mandates. Second, the Commission erroneously determined that Government Code Section 17556 bars reimbursement because Petitioners have sufficient fee authority to pay for the costs of any new mandates.

Eligibility to Claim Reimbursement

The Commission determined that Richvale and Biggs-West are not eligible to claim reimbursement because they do not collect or expend "proceeds of taxes" subject to the tax and spend limitations of Articles XIII A and B. Relying on the California Supreme Court's opinion in *County of Fresno v. State of California*, the Commission concluded that reimbursement for a state mandate is required only if a local agency is compelled to rely on "proceeds of taxes" to meet the mandate. If an agency does not collect or expend proceeds of taxes, it is not subject to the appropriations limitation of Article XIII B, and therefore is not eligible for reimbursement under Article XIII B, Section 6. Because Richvale and Biggs-West do not receive any property tax revenues, the Commission determined they are not eligible for reimbursement.

Petitioners (and CSDA) argue that the plain language of Article XIII B, Section 6 – as amended by Proposition 1A -- indicates that reimbursement is available to "any local government," without qualification. Petitioners argue that the Commission's reliance on *County of Fresno* is misplaced because that case was decided prior to Proposition 218, when there were no constitutional restrictions on nontax sources of local revenues. Thus, the Court focused on "tax revenues" as the only constitutionally-limited local revenue sources.

With the adoption of Proposition 218, assessments and fees joined taxes as limited revenue sources. Thus, Petitioners argue that the subvention requirement should protect local government revenues derived from assessments and fees in the same manner it protects tax revenues. Petitioners contend that this construction is consistent with the purpose of Article XIII B, Section 6, which is to prevent the State from shifting

financial responsibility for carrying out governmental programs to local entities that are "ill equipped" to handle the task.

This court concludes that the Commission properly interpreted the Supreme Court's decision in *County of Fresno*, but misapplied that decision to the facts of this case. In reaching this conclusion, the court acknowledges that Petitioners' "plain language" argument has intellectual appeal. However, the court cannot ignore the constraints imposed by the doctrine of *stare decisis*.

The doctrine of *stare decisis* expresses a fundamental policy of law that courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. (*Cuccia v. Superior Court* (2007) 153 Cal.App.4th 347, 353.) A decision of an appellate court is binding on a lower court even if the lower court believes it was wrongly decided. Application of the doctrine here means this court is bound by the Supreme Court's decision in *County of Fresno*.

In *County of Fresno*, the Supreme Court rejected a "plain meaning" interpretation of Section 6. *County of Fresno* involved a facial constitutional challenge to Government Code Section 17556. As discussed above, Section 17556(d) provides that the Commission shall not find costs to be mandated by the State if the local agency has authority to levy charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. The petitioner argued that the provision was facially unconstitutional because it conflicted with the language of Article XIII B, Section 6, which contains no such exception. The Court disagreed.

In reaching its decision, the Court acknowledged that Section 6 "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," subject only to the exceptions enumerated in the initiative. (*County of Fresno, supra*, 53 Cal.3d at p.487.) Nevertheless, the Court concluded that Section 6, "read in its textual and historical context," was intended to protect only the "tax revenues" of local governments. Thus, the term "costs" in Article XIII B, Section 6, implicitly excludes expenses that are recoverable from sources other than "taxes." (*Id*. at pp.487-88.)

Although Section 17556(d) only refers to charges, fees, and assessments, the Supreme Court's reasoning is broad enough to cover any non-tax sources of revenue. Thus, the Court ruled that subvention is required "only when the costs in question can be recovered *solely from tax revenues*." (*Ibid*.) Based on this analysis, the Court found the statute to be facially constitutional. Because such expenses are outside the scope of

the constitutional provision, the Legislature did not unlawfully create a new exception to the subvention requirement.[6]

Petitioners may criticize the decision in *County of Fresno* for failing to abide by the rules of statutory construction. It is hornbook law that courts are bound to give effect to constitutional provisions according to the usual, ordinary import of the language used. If the language is clear and unambiguous, the plain meaning controls and courts should not resort to extrinsic aids to determine intent. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444; *City of Alhambra v. County of Los Angeles* (2012) 55 Cal. 4th 707, 719; see also *Morgan, supra,* 223 Cal.App.4th at pp.905-906.)

Courts must avoid unnecessarily changing a law in the name of "construing" it. If the words are clear, a court may not alter them to accomplish a purpose that does not appear on its face. (*People v. Savala* (1981) 116 Cal.App.3d 41, 61.) Generally a court may not read an exception into a statute or constitutional provision unless it must be implied in order not to violate an established rule of public policy. (*People v. Goodson* (1990) 226 Cal.App.3d 277, 281.)

As the Supreme Court observed in *County of Fresno*, the plain language of Section 6 broadly declares that "[w]henever the [State] mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service," with only three designated exceptions. In *County of Fresno*, the Court did not expressly find this language ambiguous, but it nevertheless resorted to extrinsic sources to determine voter intent.

In addition, the paramount goal of constitutional interpretation is to ascertain the intent of the lawmakers – in this case, the voters -- so as to effectuate the purpose of the law. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) The term "purpose" refers not to the subjective motivation of those who enacted the initiative, but to the intended result or effect of the legislation. (See *Board of Supervisors v. Superior Court* (1995) 32 Cal.App.4th 1616, 1623.) The relevant inquiry is: What purpose was the law intended to achieve?

[6] Because *County of Fresno* was decided prior to the adoption of Proposition 218, the Court assumed that costs of state-mandated programs always are recoverable, either from tax revenues or from other (non-tax) sources of revenues such as fees, charges, and assessments. In limiting subvention to expenses that are recoverable "solely from taxes," the Court assumed that expenses determined to be outside the scope of subvention would be recoverable from other sources, such as fees, charges, and assessments. After Propositions 218 and 26, this is not necessarily correct, which may justify the Court revisiting the broad rule established in *County of Fresno*.

In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, the Supreme Court declared the purpose of Section 6 was to preclude a shift of financial responsibility for carrying out governmental functions from the State to local agencies. The apparent inspiration or motivation for the provision was the recognition that local agencies had their taxing powers restricted by the enactment of Article XIII A in the preceding year and therefore were "ill equipped" to take responsibility for new programs. (*Id*. at pp. 56-57, 61.) In *County of Fresno*, the Court arguably merged these concepts and determined that the "purpose" of Section 6 was to protect local "tax revenues," even though Section 6 (as originally enacted) did not mention taxes, tax revenues, or the taxing limitations imposed by Article XIII A.[7]

However, it is not for this court to reconsider whether *County of Fresno* was rightly decided. As a court exercising inferior jurisdiction, this court is bound by the doctrine of *stare decisis* to follow the decisions of courts exercising superior jurisdiction. A lower court may not overrule the "holding" of a higher court. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455.)

There can be no dispute that the "tax revenue" language in *County of Fresno* is part of the Court's holding, because it consists of statements of law necessary to the decision. (*In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1176-77.) Thus, if the construction of Section 6 in *County of Fresno* is to be overruled, it is up to the California Supreme Court to do it.[8]

This disposes of the argument that Section 6 applies by its "plain language" to any local agency, without qualifications. The Supreme Court has construed Article XIII B, Section 6 as designed to protect the proceeds of "taxes." It construed the term "costs" in Article XIII B, Section 6 as excluding expenses that are recoverable from sources other than taxes. This court cannot ignore that decision and reinterpret the term costs to include expenses that are recoverable from sources other than taxes.

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[7] The fact that Section 6, as originally enacted, did not refer to "taxes" or "appropriations subject to limitation," raises an issue about whether the voters intended the subvention requirement to incorporate subsequent changes to the law governing the definition of "taxes" and "appropriations subject to limitation." Normally, this question is answered by looking at the terminology used to determine whether the lawmakers intended the law to grow with changes in jurisprudence, or intended instead that the law remain frozen as originally enacted. This is not a trivial consideration. In 1990, Proposition 111 created additional exemptions from the category of appropriations subject to limitation. *County of Fresno* provides no express guidance on whether such amendments should be considered in determining the scope of subvention required by Section 6, though it is difficult to conceive how such amendments could be considered without also considering the amendments made by Proposition 218. (See *Old Homestead Bakery, Inc. v. Marsh* (1925) 75 Cal.App.247, 259 [discussing rule of *in pari materia* with regard to revenue and taxation statutes].)

[8] The addition of Article XIII B, Section 6(c) by Proposition 1A in 2004 does not alter this analysis.

Nevertheless, the language used in *County of Fresno* should not be taken out of context, for even the "devil can cite Scripture for his purpose." (Shakespeare, Merchant of Venice, act I, scene 3, cited in *Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 666.) Expressions used in judicial opinions are always to be construed and limited by reference to the matters under consideration. (*Estate of Miller* (1951) 104 Cal.App.2d 1, 17; *People v. Smith* (2003) 110 Cal.App.4th 1072, 1106 fn.73.)

Construed in context, it is clear that the Court in *County of Fresno* used the term "taxes" as that term is defined in Article XIII B. (*County of Fresno, supra*, 53 Cal.3d at pp.486-87.) For local agencies, Article XIII B defines "proceeds of taxes" to include, "*but not be restricted to*," all tax revenues *and* proceeds from (1) regulatory charges and fees, to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; (2) the investment of tax revenues; and (3) subventions received from the State (other than pursuant to Section 6).[9] (Cal. Const. Art. XIII B, § 8 [emphasis added].)

The Commission, in contrast, interpreted the term "taxes" to mean "local property tax revenues." It concluded that if a local agency does not currently receive local property tax revenues, the agency is *per se* ineligible for subvention.[10] This does not follow. Article XIII B clearly defines "proceeds of taxes" as including,[11] without limitation, "all tax revenues,"[12] excessive regulatory fees and user charges, proceeds from the investment

[9] Under Article XIII B, state financial assistance to local government generally is not subject to the state appropriations limit, but is subject to the local appropriations limit. In contrast, funds provided to reimburse local governments for state mandates are not subject to the local appropriations limit, but are subject to the state appropriations limit. (Cal. Const. Art. XIII B, § 8.) Because Article XIII B distinguishes between the two types of subvention, it is clear that voters intended local governments to receive funding for state mandates separate and apart from whatever other financial assistance they may receive from the State.

[10] In other parts of its Decision, the Commission seems to acknowledge that the reasoning of *County of Fresno* potentially extends beyond local property taxes: "If the local entity is not compelled to rely on appropriations subject to the limitation to comply with the alleged mandate, no reimbursement is required." (Decision, p.34; see also p.35 [the issue is "to what extent [an agency's] sources of revenue (and the appropriations to be made) are limited by articles XIII A and XIII B."]

[11] The word "including" is a term of enlargement, (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 216-217), suggesting that other revenue sources (beyond "subventions" and "tax revenues") might qualify as "proceeds of taxes" under Article XIII B. It is unclear whether the California Supreme Court considered this argument in *County of Fresno*.

[12] While the term "tax" traditionally had no fixed meaning, a tax frequently was defined as a compelled contribution levied to raise revenue for the general support of government. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874.) Courts suggested that any compelled contribution levied to raise revenues for the general support of government may qualify as a "tax" within the meaning of Article XIII B. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 449-50; see also *Redevelopment Agency of the City of San Marcos v. California Commission on State Mandates* (1997) 55 Cal.App.4th 976, 983, 986.)

Proposition 26 subsequently amended the California Constitution to define the term "tax" to mean "any levy, charge, or exaction of any kind" imposed by government, except those that meet one of seven

of tax revenues, as well as most subventions from the State. (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448-50.) Thus, a local government may be subject to the Article XIII B appropriations limit even if it is not currently receiving any *ad valorem* property taxes.

The redevelopment cases cited by the Commission do not compel a different conclusion. The analysis in those cases is specific to tax increment financing under Article XVI, § 16. Pursuant to Health and Safety Code Section 33678, the funds a redevelopment agency receives from tax increment financing are not "proceeds of taxes" subject to the Article XIII B appropriations limit. The constitutional validity of Section 33678 was upheld in *Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014. Thus, as a matter of law, tax increment revenues received by redevelopment agencies are not "proceeds of taxes" within the meaning of Article XIII B. Because tax increment revenues are not "proceeds of taxes," *County of Fresno* dictates that subvention is not required when redevelopment agencies are mandated to use tax increment revenues for state-mandated programs. (*Redevelopment Agency of the City of San Marcos v. California Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-87; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-82.)

Richvale and Biggs-West are not redevelopment agencies. They are not funded solely by tax increment financing. Thus, the redevelopment cases have no application here.

It well may be that Richvale and Biggs-West do not (and cannot) receive "proceeds of taxes" and therefore are not actually entitled to reimbursement for mandated costs, but the court cannot make this determination based on the record presented.[13] Here, the Commission never determined whether Richvale and Biggs-West receive any "proceeds of taxes" within the meaning of Article XIII B, and therefore never determined whether they would be compelled to rely on limited appropriations to satisfy the mandates at issue.

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specified exemptions. (Cal. Const. Art. XIII C, § 1(e).) Thus, levies enacted after the effective date of Proposition 26 are more likely to be classified as "taxes."

At minimum, taxes received by local governments may include, in addition to property taxes, sales taxes, utility taxes, transient occupancy taxes, business taxes, parcel taxes, and documentary transfer taxes. It is unclear from the record whether Richvale and Biggs-West collect any of these other taxes.

[13] Determining whether Richvale and Biggs-West receive "proceeds of taxes" will require a comprehensive account of the revenues received by them, and a subsequent determination as to whether those revenues constitute "taxes" within the meaning of Article XIII B. No simple feat.

Based on the record presented, the court agrees that the Commission abused its discretion in determining that Richvale and Biggs-West are "ineligible" to claim reimbursement merely because they do not "receive *ad valorem* property tax revenue."

Sufficient Fee Authority

As described above, Government Code Section 17556(d) precludes finding costs to be mandated by the State if the local agency has authority to levy charges, fees, or assessments sufficient to pay for the mandated program. (Cal. Gov. Code § 17556(d).) The California Supreme Court upheld the facial constitutionality of Section 17556(d) in *County of Fresno*. Relying on Section 17556(d) and *County of Fresno*, the Commission denied the test claims, concluding the test claim statutes do not impose any reimbursable "costs" because the claimants possess fee authority sufficient as a matter of law to cover the costs of any new mandated activities.

Petitioners admit that, but for Proposition 218, they would have sufficient authority to establish or increase fees or charges to recover the costs of any new mandates. However, Petitioners contend that Proposition 218 removed their authority to establish or increase property-related fees or charges. Petitioners contend that under Proposition 218, a local agency only has authority to "propose" a fee or charge. The local agency then must provide written notice by mail of the proposed fee or charge to each affected landowner, who may file a written protest. If a majority of the owners file protests against the proposed fee or charge, the fee or charge cannot be imposed. (Cal. Const., Art. XIII D, § 6.) Thus, Petitioners argue, the ultimate decision-making authority rests with the landowners, not the agency.

Petitioners argue that the Commission correctly recognized the impact of Proposition 218 in an earlier test claim decision, *Discharge of Stormwater Runoff*, Test Claim No. 07-TC-09, Mar. 26, 2010. In *Stormwater*, the Commission determined that Government Code Section 17556(d) did not apply because the agency's authority to impose a fee was contingent on the outcome of Proposition 218's voting and majority protest procedures. The Commission concluded the local agency did not have "sufficient" authority to pay for the mandated program. (AR, at CSM_2318 through CSM_2334.)

In the Decision, the Commission recognized that Petitioners' fee authority is subject to limitations, including the majority protest provision of Proposition 218. However, the Commission ruled that for the majority protest provision to constitute a legal barrier, either Petitioners "would have to provide evidence that they tried and failed" to impose or increase the necessary-fees, or a court would have to determine that the threat of a majority protest is a constitutional barrier to fee authority as a matter of law. (Decision,

pp.78-79.) The “speculative and uncertain threat” of a majority protest by itself cannot defeat Petitioners’ fee authority.

The Commission attempted to distinguish its earlier decision in *Stormwater* by claiming that Petitioners’ fees are exempt from the voter approval requirement, whereas the fees in *Stormwater* were not. (AR, at CSM_84.) But that claim is flatly contradicted by the record. (AR, at CSM_2333.)

In *Stormwater*, the Commission considered some fees that are subject to Proposition 218’s voter-approval requirement, and some that are not. (AR, at CSM_2333.) The Commission concluded that a local agency does not have sufficient fee authority if the fee is subject to voting *or* majority protest requirements under Proposition 218. The Commission concluded that these requirements strip the local agency of authority to impose the fee. (See AR, at CSM_2324 through CSM_2325 and CSM_2332 through CSM_2334.) The Commission rejected an argument of the State Water Board that the voting and majority protest requirements are equivalent to the practical/economic infeasibility hurdles discussed in *Connell v. Superior Court* (1997) 59 Cal.App.4th 382. (See AR, at CSM_2324 through CSM_2325.)

In this case, the Commission reversed course, determining that a majority protest provision is not a legal barrier to fee authority, but merely a practical or economic hurdle, as in *Connell*. (See AR, at CSM_83 through CSM_85.) It follows that the *Stormwater* decision is not “distinguishable;” it is simply inconsistent – as the Commission now seems to concede in its Opposition brief. (See Opposition, p.17.)

The fact that the Commission’s Decision is inconsistent with *Stormwater* does not, by itself, render it invalid. Commission decisions are not precedential, and the Commission may depart from its reasoning in a prior test claim, provided its action is not arbitrary or capricious. (Cal. Gov. Code §§ 17533, 11425.60.) An agency has the power to “change its mind.” (*Citicorp N. Am. v. Franchise Tax Bd*. (2000) 83 Cal.App.4th 1403, 1419-20.) However, a new interpretation which conflicts with an earlier interpretation is entitled to considerably less deference. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 14; see also *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 57 [an administrative decision, even if not designated precedential, properly informs as an administrative interpretation of the law].)

Because the court itself is the ultimate arbiter of the interpretation of the law, the court must decide which Commission interpretation is correct: its initial determination that a majority protest provision is a legal barrier to an agency’s fee authority, or its

subsequent determination that it is not (at least until the agency has "tried and failed" to impose the necessary fees.) (See *East Peninsula Educ. Council, Inc. v. Palos Verdes Peninsula Unified Sch. Dist.* (1989) 210 Cal.App.3d 155, 165 [use of an erroneous legal standard constitutes a failure to proceed in the manner required by law].)

The court concludes that the Commission's more recent interpretation is correct. The mere threat of a majority protest provision is not a legal barrier to an agency's fee authority. A majority protest requirement is not a legal barrier until it is exercised.

Section 17556(d) precludes reimbursement where a local agency has the authority – i.e., the right or power – to levy fees sufficient to cover the costs of the state-mandated program. Nothing in the language of the statute indicates that an agency's fee authority must be unconditional; it merely must be "sufficient."

Case law also supports the view that an agency's fee authority need not be absolute. In *County of Placer, supra*, 113 Cal.App.3d 443, which was cited with approval in *County of Fresno*, the Court of Appeal held that governmental spending restrictions imposed under Article XIII B do not limit a local agency's ability to expend funds collected from non-tax sources, such as special assessments. In reaching this determination, the Court noted that most special assessment acts contain a majority protest provision. Nevertheless, the Court held that special assessments are not the type of exaction intended to be included within the limitations of Article XIII B. (*Id*. at pp.453-55.)

Similarly, in *County of Fresno*, the County did not possess unlimited fee authority. Both the Health and Safety Code and Article XIII B limited the County to collecting fees in an amount sufficient to pay for the costs of the services provided. The County was prohibited from charging "excess" fees. Yet this did not prevent application of Section 17556(d). (*County of Fresno, supra*, 53 Cal.3d 482, 485-87; see also *Connell, supra*, 59 Cal.App.4th 382 [Districts had authority to levy fees sufficient to cover the costs at issue].)

Petitioners are correct that the authority of local agencies to recover costs through charges, fees, and assessments was impacted by Proposition 218. However, the mere specter of a majority protest should not, by itself, negate a local agency's fee authority. While it is possible that a majority of the owners will protest a proposed fee, it is also possible that they will not.

Under Proposition 218, a local agency lacks authority to impose a fee for water services if it is actually protested by a majority of the affected owners. But, like the Commission, this court is unwilling to conclude that Petitioners lack "sufficient" fee authority based on

the speculative and uncertain threat of a majority protest. Thus, in the absence of a showing that Petitioners have "tried and failed" to impose or increase the necessary fees, the Commission properly concluded that Petitioners have sufficient fee authority to cover the costs of any mandated programs.

The court does not agree with Petitioners that requiring such a showing will bar agencies from timely filing test claims. Under Government Code Section 17551, test claims must be filed within 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*. (Cal. Gov. Code § 17551 [emphasis added].)

According to *County of Fresno*, the Legislature has construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. Thus, until an agency knows whether expenses are recoverable from sources other than taxes, it does not know whether it has incurred any "costs." Logically then, the limitations period for filing a test claim cannot begin to run until after the agency has "tried and failed" to recover the costs through fees or charges subject to a majority protest requirement.

Further, given the relatively short deadline for owners to file a protest, the agency generally should know within one year whether a particular fee or charge has been blocked by a majority protest. In that rare case where it takes longer than one year to enact a fee to cover a new mandate, the court has little difficultly concluding that the time period for submitting a test claim should (at minimum) be equitably tolled while the agency completes the majority protest procedures.[14] To conclude otherwise would produce the absurd result that a claimant would have no means of seeking reimbursement even for expenses that are indisputably "costs mandated by the State." That cannot be the law.

If, as the court finds, the Commission's Decision is correct, then claimants must have a means to submit their test claims to the Commission *after* fulfilling the majority protest requirement.

Disposition

The court concludes that the Commission abused its discretion in dismissing Richvale and Biggs-West as eligible claimants. However, because the court finds the

[14] To ensure its rights are preserved, the agency also could file its test claim before the rate-setting process is complete, and request the Commission stay the claim pending the outcome of the majority protest process.

Commission correctly denied the test claims because Petitioners have not (yet) incurred any costs mandated by the State, the court shall deny the petition. This ruling shall be without prejudice to Petitioners' ability to file a new test claim if fees/charges proposed to recover the costs of the programs are blocked by a majority protest.

In the event that this tentative ruling becomes the final ruling of the court, counsel for the Commission is directed to prepare a formal judgment, incorporating this ruling as an exhibit; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

This tentative ruling shall become the ruling of the court unless a party desiring to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear. Any party desiring an official record of this proceeding shall make arrangements for reporting services with the clerk of the department where the matter will be heard not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day for proceedings lasting more than one hour. (Local Rule 1.12 and Government Code § 68086.)