Court of Appeal No. C077906

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

MANTECA UNIFIED SCHOOL DISTRICT,
Plaintiff, Respondent, and Cross-Appellant,

vs.

RECLAMATION DISTRICT NO. 17 (RD 17 – MOSSDALE);
GOVERNING BOARD OF RECLAMATION DISTRICT 17 (RD 17 – MOSSDALE),

Defendants, Cross-Complainants and Appellants.

Appeal from the Judgment of the Superior Court of the State of California,
[Superior Court Case No. 39-2001-00273848-CU-MC-STK]
County of San Joaquin, the Honorable Bob W. McNatt, Presiding

---

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE, FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS AND CROSS-APPELLANTS MANTECA UNIFIED SCHOOL DISTRICT; *AMICUS CURIAE* BRIEF IN SUPPORT THEREOF

Megan Burke, Esq. (State Bar No. 267986)
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 273-8780; Fax: (510) 839-9104

Keith Bray, Esq. (SBN 128002)
Joshua Daniels, Esq. (SBN 259676)
California School Boards Association
3251 Beacon Blvd
West Sacramento, CA 95691

Attorneys for
CALIFORNIA SCHOOL BOARDS ASSOCIATION
EDUCATION LEGAL ALLIANCE

Court of Appeal No. C077906

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

MANTECA UNIFIED SCHOOL DISTRICT,
Plaintiff, Respondent, and Cross-Appellant,

vs.

RECLAMATION DISTRICT NO. 17 (RD 17 – MOSSDALE);
GOVERNING BOARD OF RECLAMATION DISTRICT 17 (RD 17 – MOSSDALE),

Defendants, Cross-Complainants and Appellants.

Appeal from the Judgment of the Superior Court of the State of California,
[Superior Court Case No. 39-2001-00273848-CU-MC-STK]
County of San Joaquin, the Honorable Bob W. McNatt, Presiding

---

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE, FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS AND CROSS-APPELLANTS MANTECA UNIFIED SCHOOL DISTRICT; *AMICUS CURIAE* BRIEF IN SUPPORT THEREOF

Megan Burke, Esq. (State Bar No. 267986)
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 273-8780; Fax: (510) 839-9104

Keith Bray, Esq. (SBN 128002)
Joshua Daniels, Esq. (SBN 259676)
California School Boards Association
3251 Beacon Blvd
West Sacramento, CA 95691

Attorneys for
CALIFORNIA SCHOOL BOARDS ASSOCIATION
EDUCATION LEGAL ALLIANCE

CERTIFICATE OF INTERESTED PARTIES

Amicus Curiae California School Boards Association's Education Legal Alliance knows of no entity or person that must be disclosed pursuant to California Rules of Court, Rule 8.208(e)(1) or (2).

Dated: August 14, 2015

By: _____

Megan A. Burke, Esq.
BURKE, WILLIAMS & SORENSEN, LLP
Attorneys for *Amicus Curiae*
California School Boards Association's
Education Legal Alliance

Court of Appeal No. C077906

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

MANTECA UNIFIED SCHOOL DISTRICT,
Plaintiff, Respondent, and Cross-Appellant,

vs.

RECLAMATION DISTRICT NO. 17 (RD 17 – MOSSDALE); GOVERNING BOARD OF RECLAMATION DISTRICT 17 (RD 17 – MOSSDALE),

Defendants, Cross-Complainants and Appellants.

Appeal from the Judgment of the Superior Court of the State of California,
[Superior Court Case No. 39-2001-00273848-CU-MC-STK]
County of San Joaquin, the Honorable Bob W. McNatt, Presiding

---

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE, FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS AND CROSS-APPELLANTS MANTECA UNIFIED SCHOOL DISTRICT

Megan Burke, Esq. (State Bar No. 267986)
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 273-8780; Fax: (510) 839-9104

Keith Bray, Esq. (SBN 128002)
Joshua Daniels, Esq. (SBN 259676)
California School Boards Association
3251 Beacon Blvd – West Sacramento, CA 95691

Attorneys for
CALIFORNIA SCHOOL BOARDS ASSOCIATION
EDUCATION LEGAL ALLIANCE

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to California Rules of Court, Rule 8.200(c), the California School Boards Association's Education Legal Alliance respectfully requests leave to file the attached *Amicus Curiae* brief in support of the position of Respondents and Cross-Appellants MANTECA UNIFIED SCHOOL DISTRICT (hereinafter "MUSD").

The California School Boards Association ("CSBA") is a California non-profit corporation composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout the State. CSBA supports local school board governance and provides advocacy for school districts and county offices of education. The Education Legal Alliance ("ELA"), which is part of CSBA, helps protect the discretion and authority accorded to local governing boards to make policy and fiscal decisions that serve the best interests of their local educational agencies. The ELA represents CSBA members by addressing issues of statewide concern to school districts, including joining in litigation where the interests of public education are at stake.

The ELA has a distinct interest in the outcome of this matter. The San Joaquin Superior Court correctly held that Proposition 218 did not repeal the Legislature's decision to exempt school districts from assessments imposed by reclamation districts pursuant to Water Code section 51200. If that ruling is overturned, the ELA estimates that over 70 of its member school districts will be subjected to unexpected and illegal reclamation district assessments. (See http://www.csda.net/special-districts/map.) This would impose a significant financial burden on every assessed school district in direct contravention of the Legislature's express

intent that school districts be exempt from such charges. In this age of fiscal austerity, the ELA must express its concern regarding the attempt by Appellant, Reclamation District No. 17 ("RD 17"), to siphon off school district funds that should be used to educate California's children.

More importantly, this Court's ruling could have significant impacts reaching far beyond reclamation district assessments imposed pursuant to Water Code section 51200. Amici Curiae, Reclamation District Nos. 1608 and 1614 (collectively "Reclamation Amici"), argue that Proposition 218 revoked the Legislature's authority to exempt any public entity from assessments, regardless of the assessing agency or the statute under which the assessment is imposed. This would represent a massive change in the law as it has existed for the last century, which acknowledged the Legislature's unconditional authority to determine when one local agency would be permitted to assess another. Should the Reclamation Amici succeed, school districts across the state would be subject to numerous other assessments imposed by local agencies for a myriad of purposes, not just to reclamation district assessments imposed pursuant to Water Code section 51200. As such, the outcome of this appeal could dramatically increase the amount of assessments imposed on school districts (and other local governments) and thereby threaten their ability to fund essential services.

Such a reduction in school districts' funds would be especially problematic given the historical funding lows that school districts have endured. Over the past 30 years, California's school finance system has fallen short for school districts and the State's children. While the condition of K-12 financing has improved somewhat in the last few years, California still spends less per pupil than the national average according to the most recent data available. (See http://laschoolreport.com/report-california-well-below-average-in-per-pupil-spending-in-2013.) If this

Court rules that school districts are no longer exempt from reclamation district assessments (or, possibly, even from assessments by other districts), schools will be forced to shoulder a new and substantial financial burden, which will only undermine the Legislature's recent investments in California's children.

Per California Rules of Court, Rule 8.200(c)(3), no counsel for any party authored the amicus brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the ELA, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

Dated: August 14, 2015

By: Megan Burke

Megan A. Burke, Esq.
BURKE, WILLIAMS & SORENSEN, LLP
Attorneys for *Amicus Curiae*
California School Boards Association
Education Legal Alliance

Court of Appeal No. C077906

IN THE COURT OF APPEAL, STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

MANTECA UNIFIED SCHOOL DISTRICT,
Plaintiff, Respondent, and Cross-Appellant,

vs.

RECLAMATION DISTRICT NO. 17 (RD 17 – MOSSDALE); GOVERNING BOARD OF RECLAMATION DISTRICT 17 (RD 17 – MOSSDALE),

Defendants, Cross-Complainants and Appellants.

Appeal from the Judgment of the Superior Court of the State of California,
[Superior Court Case No. 39-2001-00273848-CU-MC-STK]
County of San Joaquin, the Honorable Bob W. McNatt, Presiding

---

AMICUS CURIAE BRIEF OF CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE, IN SUPPORT OF RESPONDENTS AND CROSS-APPELLANTS MANTECA UNIFIED SCHOOL DISTRICT; *AMICUS CURIAE* BRIEF IN SUPPORT THEREOF

Megan Burke, Esq. (State Bar No. 267986)
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612
Tel: (510) 273-8780; Fax: (510) 839-9104

Keith Bray, Esq. (SBN 128002)
Joshua Daniels, Esq. (SBN 259676)
California School Boards Association
3251 Beacon Blvd – West Sacramento, CA 95691

Attorneys for
CALIFORNIA SCHOOL BOARDS ASSOCIATION
EDUCATION LEGAL ALLIANCE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

State Cases

State Statutes

Other Authorities

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS

I. INTRODUCTION

Under Article XIII of the California Constitution, property owned by public entities is automatically exempt from assessment unless expressly authorized by the Legislature. Therefore, unless the Legislature enacts express authority, local governments are prohibited from funding their projects with assessments imposed on property owned by other public entities. This blanketed exemption allows the Legislature to determine when and under what conditions one of its political subdivisions should be required to pay assessments to another.

In enacting Water Code section 51200, the Legislature determined that reclamation districts should be permitted to assess public entity property located in their districts "other than public roads, highways, and school districts." Thus, the Legislature lifted the general exemption for reclamation district assessments against some public entity properties, but left it in place for school district property.

RD 17 acknowledges that public entity property is exempt from assessment unless expressly authorized by the Legislature. It likewise acknowledges that Proposition 218 did not repeal the automatic exemption for public entity property or revoke the Legislature's broad authority to determine when to lift the exemption and allow such property to be assessed. Despite these significant admissions, RD 17 makes the contradictory assertion that Proposition 218 did revoke the Legislature's more narrow authority to authorize assessments against some, but not all, public entities. According to RD 17, Section 4(a) of Proposition 218 prohibits the Legislature from authorizing the assessment of some types of public property while excluding others. RD 17 then applies this construction to Water Code section 51200 and concludes that Proposition

218 repealed the legislatively-created exemption for public roads, highways, and school districts from reclamation district assessments. RD 17 is mistaken.

First, case law holds that the Legislature's authority to determine when public entity property may be assessed and to exempt some public entities from assessment remains absolute post Proposition 218. Second, nothing in Proposition 218 suggests, much less expressly states, that it was intended to revoke the Legislature's authority to exempt public entity properties from assessment. Given the strong presumption against implied repeal and the traditional deference to the Legislature's authority over its political subdivisions, such intent cannot be implied.

Moreover, RD 17's construction of Proposition 218 ignores its essential purpose, which was to restrict local government taxing authority and ensure that private property owners were not forced to pay for more than their fair share of the costs of public projects. This purpose is not effectuated by expanding reclamation districts' taxing authority and requiring school districts to pay reclamation district assessments in violation of the Legislature's will. Rather, because Proposition 218 protects private property owners from an excess assessment regardless of whether that assessment is imposed on public entities, private landowners will still be protected from excess reclamation district assessments even if public entities remain exempt from assessment.

If the Legislature had seen fit for reclamation districts to impose assessments against school districts, it could have easily made such provisions. Instead, Water Code section 51200 expressly prohibits reclamation districts from assessing school district property. That policy decision must be upheld.

II. LEGAL ARGUMENT

A. Summary and Background of Assessment Laws

It has long been the law in California that property owned by public entities cannot be assessed unless expressly authorized by the Legislature. Article XIII, section 3, subdivision (b) of the California Constitution exempts property owned by public entities, such as school districts, from property taxation. In *San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154 ("*San Marcos*"), the California Supreme Court definitively held that the constitutional property tax exemption for public entity property also impliedly exempted such property from special assessments. "The principle which makes property of the state nontaxable also precludes the imposition of a special assessment... unless there is positive legislative authority therefore." (*Id.* at 161, 168; *Regents of University of California v. East Bay Mun. Utility Dist.* (2005) 130 Cal.App.4th 1361, 1366 ("*Regents*"); *City of Inglewood v. County of Los Angeles* (1929) 207 Cal. 697, 703-04; *Los Angeles Flood Control Dist. v. Superior Court* (1929) 207 Cal. 709; *County of Santa Barbra v. City of Santa Barbra* (1976) 59 Cal.App.3d 364, 369.)

The rationale that supported exempting public entity properties from special assessments was based on the policy of preventing "one tax-supported entity from siphoning tax money from another such entity; the end result of such a process could be unnecessary administrative costs and no actual gain in tax revenues." (*San Marcos*, 42 Cal.3d at 161.) As a practical matter, such constitutional immunity from special assessments avoids the effect of the State "taking money out of one pocket and putting it into another." (*Eisley v. Mohan* (1948) 31 Cal.2d 637, 642.) Thus, it was left to the Legislature to determine when and in what manner it would be prudent to allow one of its political subdivisions to assess another, and, in

the absence of the Legislature's express authorization, public entities would be exempt from the each other's assessments.

Prior to Proposition 218, the Legislature exercised its authority to determine whether one local government may assess another in three basic ways. First, it could do nothing, and by failing to authorize a local government to assess public entity property, it was automatically prohibited. Second, it could authorize a local government to assess some public entities, but not others, as the Legislature did when it enacted Water Code section 51200. Finally, it could authorize a local government to assess all public entity property and leave it in the local government's discretion to determine whether to impose the assessments on public entities in its district or not. The Improvement Act of 1911, the Landscaping and Lighting Act of 1972, and the Municipal Improvement Act of 1913 are examples of the third category of authorization, wherein the Legislature permitted the assessing agency to use its discretion to determine whether to exempt public property from its assessment. (See Sts. & Hwy. Code, §§ 5000 *et seq.*, 5100-5105; 5180; 10000, 10206; 22500 *et seq.*, 22663.)

The Howard Jarvis Taxpayers Association ("HJTA"), Proposition 218's drafter and primary proponent, was concerned that assessing agencies were abusing the discretion the Legislature granted them under the third category of authorization. HJTA believed that, after Proposition 13 limited local agencies' abilities to impose property taxes, agencies began imposing assessments that were not proportionate to the special benefits conferred, and were instead, essentially a means to impose a flat tax. (1 JA 95.)[1] According to HJTA, when imposing these taxes masquerading as

---

[1] Citations to the Joint Appendix are herein referred to as ([Volume Number] [Joint Appendix ("JA")] [Page Number].)

assessments, the public agencies would often exempt public properties to avoid paying the assessment themselves and to avoid the ire of fellow public agencies. (*Id.*) The result was that private parties bore the entire cost of the inflated assessment, including the portion benefiting public entities, and public entities paid nothing.

This was the context that led to the adoption of Proposition 218, which prohibited assessing agencies from, at their discretion, exempting public entities from their assessments and from imposing assessments on private landowners that exceeded the cost of the proportionate special benefit conferred on their property. Thus, Section 4(a) of Proposition 218 limited the assessing agency's discretion under the third type of authorization by forcing the assessing agency to justify its decision to exempt a public entity property with a finding that the public property receives no special benefit. In doing so, the proponents of Proposition 218 hoped to further the initiative's central purpose, which was to ensure that no private landowner would be assessed for more than their fair share.

Even though Proposition 218 repealed assessing agencies' discretion to exempt public entity property, assessing agencies were still prohibited from assessing federal properties and public property exempt from assessment by the Legislature. Therefore, to comply with Proposition 218's proportionality requirement, assessing agencies needed to ensure that their assessments did not impose costs related to those exempt properties on private properties within their district. Assessing agencies did this by individually determining the cost of providing the special benefit to non-exempt properties, on a parcel-by-parcel basis, if necessary. (1 JA 123.) By utilizing an individualized special benefit calculation, assessing agencies could comply with Proposition 218 by ensuring that no private landowner was charged more than its proportional benefit. (1 JA 130.)

Because the individualized special benefit calculation excludes costs of benefits conferred on exempt properties and costs associated with general benefits conferred on the general public, the assessment is often insufficient to cover the full cost of the project. This consequence was well known by the voters when they adopted Proposition 218 because the ballot materials noted that assessing agencies would often be required to seek funding from other sources or "use general revenues (such as taxes) to pay the remaining portion of the project or service cost." (1 JA 130.)

This is precisely what RD 17 did when it planned the levee project at issue in this case. In July of 2008, RD 17 noticed a "Public Hearing and Assessment Ballot Proceeding" and provided property owners an opportunity to cast their votes for or against the assessment. (1 JA 200.) The notice stated that the levee project was estimated to cost between $52 million and $100 million, and that, with voter approval, the assessment would provide about $30 million of the project funding. (*Id.*) However, as RD 17 clearly stated in the Notice, it intended to secure the remaining $22 million to $70 million in project funding from the State. (*Id.*) Thus, RD 17 sought to fund its levee project, while complying with Proposition 218's proportionality requirement, by supplementing assessment revenue with State funding.

Such a funding arrangement is typical of how assessments have been used to help fund projects throughout California. However, where RD 17 went wrong was in including MUSD, an exempt public entity, in its assessment.

B. RD 17 Admits That Property Owned By Public Entities Cannot be Assessed Without Express Authority From the Legislature

RD 17 acknowledges that Article XIII of the California Constitution prohibits the assessment of public entity property absent express authorization from the Legislature. (ARB, p. 19.) It likewise admits that Section 4(a) of Proposition 218 did not revoke the Legislature's broad authority to determine whether one of its political subdivisions will be permitted to assess another.[2] (*Id.*) However, despite these clear admissions, RD 17 argues that, in addition to rescinding assessing agencies' discretion to exempt public entities from assessment, Proposition 218 also revoked the Legislature's authority to authorize assessments against some, but not all, public entities, and therefore, repealed the Legislature's authority under the second type of authorization. This cannot be the law. The Legislature's absolute authority to exempt all public property from assessment, must, necessarily, include its right to exempt certain public properties from assessment.

As RD 17 acknowledges, the longstanding principle of public entity exemption was upheld in the post-Proposition 218 case of *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 356-357 ("*City of Marina*"), where the court concluded that Article XIII continued to impliedly exempt publicly owned property from special assessments made without legislative authority. (*Id.* at 357 (Art. XIII of the California Constitution has been construed as "implicitly exempting

---

[2] In contrast, Reclamation Amici argue that Proposition 218 expressly repealed Water Code section 51200 because Section 4(a) mandates "that all public property be assessed." (Reclamation Amici Brief, p. 6.) Not only is Reclamation Amici's contention expressly contradicted by RD 17, but, as explained below, it is also without merit.

publicly owned property from special assessments made without legislative authority."); see also, *Regents*, 130 Cal.App.4th at 1366.)

Moreover, given the strong presumption against implied repeal of constitutional protections, Proposition 218 could not have impliedly revoked the Legislature's authority to exempt public entities from assessment. (See *Western Oil and Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419-420.) Absent an express declaration of legislative intent to repeal, courts will find an implied repeal "only when there is no rational basis for harmonizing the two potentially conflicting statutes and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." (*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 817 ("*Barratt*").) In *Barratt*, the court observed that this presumption against implied repeal was especially strong as applied to Proposition 218 because, when the initiative intended to repeal a law, it made express reference to the statute it intended to supersede. (*Id.* at 817.) Accordingly, the court concluded that, in order for Proposition 218 to repeal or supersede a preexisting law, it "must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first." (*Id.* 817.)

Nor will a new law be interpreted to limit the Legislature's authority over its political subdivisions unless expressly intended. Because local governments "are mere creatures of the state and exist only at the state's sufferance," the Legislature has "extraordinarily wide latitude in creating various types of political subdivisions and conferring authority upon them." (*Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255 ("*Matosantos*").) The number, nature and duration of the powers" conferred on local governments "rests in the absolute discretion of the

State," and "the State, therefore, at its pleasure may modify or withdraw all such powers." (*Id.* at 255.) As such, the vast authority of the Legislature over its political subdivisions will not be restricted absent an express intent by the voters to do so. (*Id.* at 260.) A "profound change in the structure of state government," such as the repeal of an exemption that currently protects over 70 school districts from reclamation district assessments, cannot be implied. (*Id.*)

Nothing in Proposition 218 implies, much less expressly states, that it was intended to divest the Legislature of its power to determine when and under what conditions its political subdivisions could be required to pay assessments. RD 17 acknowledges this. Indeed, it calls the idea that Proposition 218 repealed the assessment exemption for all public entities "perverse" and admits that, post Proposition 218, public entities remain exempt from assessments unless the Legislature expressly authorizes their assessment. (ARB at p. 19.) Despite this, RD 17 persists in its argument that Proposition 218 revoked the second of the three types of legislative authority (see discussion, *supra*, p. 7) and by repealing all exemptions for particular public entities contained in general legislative grants of assessment authority. According to RD 17, Section 4(a) of Proposition 218 prohibits the Legislature from authorizing the assessment of some types of public property while excluding others. (ARB, p. 20.) To advance this argument, RD 17 is forced to insist that Water Code section 51200's exclusion of school districts from reclamation districts' assessment authority is an exemption rather than simply a narrow authorization. Contrary to RD 17's argument, this is a distinction without a difference.

Water Code section 51200 authorizes RD 17 to assess property owned by public entities "other than public roads, highways, and school districts." RD 17 spends much of its briefing arguing that section 51200

should be read as first broadly authorizing reclamation districts to assess all public property and thereafter exempting property used for public roads, highways, and school districts from that authority. However, whether section 51200 is a broad authorization of public entity assessment authority that exempts school districts or a limited authorization to assess only certain public entities, but not school districts, is irrelevant. Section 51200 represents the Legislature's policy decision to allow reclamation districts to recoup the costs of special benefits enjoyed by some, but not all, properties owned by public entities.[3] No matter how section 51200's grant of authority is construed, it is clear that it was intended to prohibit reclamation districts from assessing school district property. As such, RD 17's construction of Proposition 218 must be rejected.

First, under RD 17's construction of the Legislature's powers under Proposition 218, the Legislature would retain the broad authority to exempt all public property from assessment simply by failing to enact authorizing legislation, but it would be deprived of the more narrow authority to permit some public entity properties from being assessed while exempting others. RD 17 is forced to resort to this argument because, as it acknowledges, Proposition 218 does not "provide any new authority to impose a tax, assessment, fee or charge." As such, RD 17 is foreclosed from arguing that Section 4(a) of Proposition 218 authorizes it to impose assessments on school districts when it could not before. But allowing RD 17 to assess school districts when the Legislature expressly excluded schools from its

---

[3] In its Amicus Brief, Reclamation Amici argue that Water Code section 51200 is not the source of reclamation districts' authority to levy assessments, but is, instead, merely a procedural mechanism for exercising the authority that section 50904 provides. (Reclamation Amici Brief at pp. 15-16.) On the contrary, it is section 50904 that sets forth the "procedure for" collecting and charging assessments, which are "levied under" section 51200. (Water Code, §§ 50904, 51200 (emphasis added).)

assessing authority is akin to granting agencies new assessment authority – in direct contravention of Section 1(a) of Proposition 218.

Second, RD 17 ignores that the Legislature's authority to permit assessment of public entities generally and then exempt school districts from that general grant of authority has been upheld post Proposition 218. In *Regents*, the court considered Government Code sections 54999.2 and 54999.3, which broadly authorize public utilities to assess public entity property but then exempt school districts and other educational agencies from any assessment enacted after July 1986 unless the exempt agency voluntarily agrees to be assessed. (*Regents*, 130 Cal.App.4th at 1383.) The court recognized that the exemption for school districts in section 54999.3 was a legislative compromise designed to weigh the interests of public utilities against educational agencies. (*Id.* At 1385.) Balancing the interests of its political subdivisions to determine when one should be able to assess another is within the Legislature's clear prerogative, which, as shown by the *Regents* decision, the Legislature retains post Proposition 218.

Finally, merely removing the Legislature's power to exempt certain public entities from assessments but not the Legislature's broader authority to exempt all public entities does little to accomplish RD 17's claimed purpose of Proposition 218. If, as RD 17 contends, a principle purpose of Proposition 218 was to ensure that public entities were forced to pay their fair share of assessments, then Section 4(a) should have revoked the general exemption enjoyed by all entities, not only the more limited exemptions enjoyed by particular entities under particular statutes, such as school districts under Water Code section 51200.

The Legislature's vast authority over its political subdivisions is a fundamental aspect of state government. As such, Proposition 218 cannot

impliedly limit the Legislature's authority to determine when and to what extent its local governments should be permitted to impose assessments on each other. If the Legislature had seen fit for reclamation districts to impose assessments against school districts, it could have easily made such provisions. Instead, both Water Code section 51200 and its predecessor, enacted in 1929, demonstrate that the Legislature expressly intended to leave school districts outside the scope of reclamation districts' assessment authority. That policy decision must be respected.[4]

C. Section 4(a) of Proposition 218 is Properly Construed as Removing the Assessing Agency's Authority to Exempt Public Property From Assessments – Not the Legislature's

Rather than limiting the Legislature's authority, Section 4(a) of Proposition 218 should be construed as a directive to the assessing agency. Under this construction, public entity property remains exempt from assessment unless expressly authorized by the Legislature. However, where the Legislature has authorized an assessing agency to assess property owned by public entities, as in the third type of authorization, the assessing agency must include those entities in its assessment and has no discretion not to. This construction is supported by Proposition 218's plain language

---

[4] Flood Control Amici assert that the policy concerns "that formed the rationale behind the rule that exempts public property from taxes and special assessments, including the notion that tax money should not be siphoned from one public entity to another, carry relatively little weight today." (Flood Control Amicus Brief, p. 7.) Not so. As explained, while the Legislature acted to authorize the assessment of some public property after the *San Marcos* decision, it continued to expressly exempt certain public property from assessment. Indeed, the post *San Marcos* legislation that Flood Control Amici cite as evidence that the Legislature is no longer concerned with assessments being used to siphon funds from one public entity to another, including Government Code sections 54999.2 and 54999.3, actually continues to exempt school district property from certain capital facilities fees.

and legislative history, and it effectuates Section 4(a)'s directive that public entity property "shall not be exempt from assessment," without resulting in an implied repeal of the Legislature's authority to determine when public property will be subject to assessment.

The plain language of Section 4(a) supports limiting its application to the assessing agency. RD 17 focuses only on Section 4(a)'s last sentence, which addresses exemption for publicly owned property, but Section 4(a) must be read in its entirety to properly effectuate its meaning. (See *Smith v. Superior Court* (2006) 39 Cal. 4th 77, 83 (statutory language must be construed in the context of the statute as a whole).) The full text of Section 4(a) states:

> An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. (emphasis added.)

Read in its entirety, Section 4(a) is clearly a directive to the assessing agency – not the Legislature. The assessing agency is directed to identify the parcels that will have a special benefit conferred upon them and to determine the proportionate special benefit for each parcel, and the assessing agency is prohibited from imposing assessments that exceed the

reasonable cost of the proportional benefit. It follows that it is the assessing agency, not the Legislature, that is prohibited from exempting publicly owned property from assessment. Section 4(a) makes absolutely no mention of the Legislature or its power to determine whether one of its political subdivisions will be granted the authority to assess another. Instead, the entire provision is directed at the assessing agency. To give effect to Section 4(a)'s plain language, where the Legislature granted the assessing agency the discretion to tax public entity property, Proposition 218 would prohibit the assessing agency from exempting public property from its assessments. However, where the Legislature did not expressly grant the assessing agency the discretion to assess public entity property, or where, as here, the Legislature granted the assessing agency the authority to assess some public property but exempted school district property from that authority, the assessing agency must continue to exclude school property from its assessment pursuant to the Legislature's directive post Proposition 218.

Nor does RD 17's citation to Section 1 of Proposition 218 save its semantic argument that Proposition 218 revoked Water Code section 51200's school district "exemption." Section 1 specifies that "[n]otwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges." (ARB, p. 14.) According to RD 17, this language means that Section 4(a)'s requirements must apply to "all exemptions existing under any provision of California law," and therefore, must revoke Water Code sections 51200's exclusion of public roads, highways, and school districts. But Section 1 states that it applies to all assessments – not all laws granting assessment authority. Therefore, Section 1 provides no support for RD 17's claim that Section 4(a) somehow impliedly repealed the Legislature's clear authority to determine when

public entities can be assessed and when they cannot. Rather, under Section 1, if an assessing agency was granted the authority to assess public entities, it can no longer choose to exempt them from its assessments. However, Section 1 does not grant assessment authority that the Legislature withheld.

The Legislative Analyst's analysis of Proposition 218 further supports this construction. According to the Legislative Analyst, under Section 4(a), "local governments must charge schools and other public agencies their share of assessments." (1 JA 0131 (emphasis added).) This description acknowledges that Proposition 218 was directed at assessing agency authority – not the Legislature. An assessing agency that is permitted to assess public entity property must do so. But the law remains that an assessing agency without such authority cannot.

Under the plain language and legislative history of Proposition 218, it is clear that the initiative intended to preserve the Legislature's well established authority to exempt public entity property from assessment while limiting local governments' discretion to do so on their own accord. This is the only interpretation that respects the Legislature's authority over its political subdivisions and avoids impliedly repealing Water Code section 51200.

D. Construing Section 4(a) of Proposition 218 to Apply Only to Assessing Agencies Will Not Increase Assessments on Private Property Owners or Prevent Assessing Agencies From Constructing Projects

After failing to show that Proposition 218's plain language or legislative history supports their construction, RD 17 and Amici then claim that, if reclamation districts are not permitted to assess school district property, then either private property owners will be forced to pay more than their fair share or reclamation districts will be unable to complete

necessary projects. Neither is true. First, Proposition 218 will continue to protect private property owners from paying more than their fair share, regardless of whether school district property remains exempt from reclamation districts' assessment. Second, as RD 17 is well aware, reclamation districts replace the funds they do not receive from school districts with funds from other sources, which is precisely what the Legislature intended when it exempted school districts from reclamation district assessments.

The undisputed primary purpose of Proposition 218 was to ensure that private parties were not required to pay assessments that exceeded their fair share. As interpreted by the courts, the obvious import of Section 4(a) is to assure that "no property owner's assessment may exceed his or her proportionate share of the cost of the special benefit," and "the proportionality requirement ensures that the aggregate fee collected on all parcels is distributed among those parcels in proportion to the cost of service for each parcel." (*City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1223; *Golden Hill Neighborhood Assoc., Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 430.) Accordingly, the prohibition against exempting public entity property from assessments must be construed in that context. The proponents of Proposition 218 were concerned about assessing agencies exempting public entity properties from assessment for one reason – they wanted to ensure that private parties were not forced to pay for benefits enjoyed by public entities, and thus, pay more than their fair share.

As explained, prior to Proposition 218, when the Legislature granted an assessing agency the authority to assess public entity property, the agency often had the discretion to exempt public property from its assessments. (See Sts. & Hwy. Code, §§ 5000 et seq., 5100-5105; 5180;

10000, 10206; 22500 et seq., 22663.) Section 4(a) firmly limited the assessing agency's discretion by forcing the agency to justify its decision to exempt a public entity property with a finding that the public property receives no special benefit.[5]

Proposition 218 sought to prevent assessing agencies from imposing costs associated with exempt public entity properties on private landowners by limiting assessing agencies' discretion, but it was not the primary way that Proposition 218 protected private property owners from excessive assessments. That goal was accomplished by the portion of Section 4(a) that requires the assessing agency to determine the special benefit derived by each identified parcel in relationship to the entirety of the capital cost of the public improvement or service and prohibits the assessment from exceeding the reasonable cost of providing that proportionate benefit. (1 JA 0086.) The assessing agency can complete this analysis, even if it does not include public entity property in its assessment, simply by excluding the cost of any benefit derived by public entity properties from the assessment that it imposes on private parties. Thus, assessing public entity property is not necessary to ensure that Proposition 218's primary purpose is fulfilled – that private property owners are not forced to pay more than their fair share by shouldering the cost of benefits conferred on public entity properties.

RD 17 assails this interpretation and characterizes it as MUSD's "assess but do not charge" approach. (ARB at p. 22.) Contrary to RD 17's contention, assessing agencies regularly include exempt properties in the

---

[5] This construction explains why the ballot materials and other legislative history for Proposition 218, cited at length by RD 17, stated that Proposition 218 would result in more school districts being forced to pay assessments. (AOB at pp. 8-10; ARB at pp. 17-18.) By revoking assessing agencies' discretion to exclude public entity property from its assessments, Section 4(a) resulted in more assessments being imposed on school districts.

assessment calculations they use to determine the cost of special benefits conferred on non-exempt properties. Indeed, agencies must routinely do this when there is exempt federal property in their district, and even under RD 17's construction, assessing agencies must exclude costs associated with the benefits conferred on public entity properties from their assessment charge in all cases where the Legislature has failed to authorize the assessment of any public entities.[6] If assessing agencies can determine proportionality by calculating the cost of special benefits conferred on all public entity properties in the district and then excluding those costs from the assessment, they can certainly do so by excluding only school districts. As such, RD 17 and Amicis' claim that exempting public entity property from assessment will necessarily cause private parties to bear the burden is contrary to the reality on the ground.

According to the Legislative Analyst, Proposition 218 requires the assessing agency to "set individual assessment charges so that no property owner pays more than his or her proportionate fair share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis." (1 JA 123.) In addition, "local governments must estimate the amount of 'special benefit' landowners receive," and "if a project provides both special benefits and general benefits, a local government may charge landowners only for the cost of providing the special benefit." (1 JA 130.)

Proposition 218 requires an individualized special benefit calculation, which assessing agencies are experienced at performing. An

---

[6] Agencies also routinely do this in their calculations of other types of fees and assessments. When calculating development impact fees and capacity fees, agencies must ensure that the fee encompasses the cost of serving development but excludes the cost of providing service to existing customers. (See Gov. Code, §§ 66000, 66001, 66013.)

exemption for public entity properties cannot circumvent Proposition 218's independent requirement that assessing agencies must not assess private properties for more than their fair share. Whether school districts remain exempt from reclamation district assessments under Water Code section 51200 or not, reclamation districts cannot pass costs associated with benefits conferred on school property onto private property owners. Thus, the purpose of Proposition 218 ensures that private parties are not forced to pay for special benefits conferred on public property without negating the Legislature's express decision to exempt school district property from assessment.

Nor will exempting school district properties from RD 17's assessments prevent it from constructing its projects as Amici suggest. RD 17 must simply supplement the funds it will not receive from the school district with other funds, as assessing agencies regularly do. Indeed, RD 17 already intended to supplement assessment funds with funding from state bonds and other government sources. (1 JA 160, 163.) RD 17's own assessment report and Notice of Public Hearing and Assessment Ballot Proceeding explained:

> The levee seepage project is estimated to cost between 52 and 100 million dollars. With landowner approval of increased assessments, local funding can provide about 30 million dollars of the cost. The balance will be the subject of application to the State for bond funds. (1 JA 200.)

RD 17 never intended to fund the levee project solely from assessments. As such, contrary to RD 17's contention, MUSD's failure to pay the approximately $100,000 annual assessment would hardly cripple the levee project. Rather, it would simply require RD 17 to increase its $22 million to $70 million funding request to the State by a few hundred thousand dollars. Indeed, when the voters adopted Proposition 218, they

knew that it could require local governments to "use general revenues (such as taxes) to pay the remaining portion of the project or service cost." (1 JA130.)

Moreover, even if the exemption of school district property from the assessment did somehow delay construction of the levee, that would not justify this Court overturning the Legislature's decision to exempt school districts from RD 17's assessments. The voters recognized that "in some cases, local governments may not have sufficient revenues to pay this cost, or may choose not to pay it." (1 JA 130.)

The ELA does not dispute that RD 17's levee project, and flood control projects generally, are quite important. But, to be frank, they are not more important than education, which is a fundamental right under our state constitution. (*Serrano v. Priest* (1976) 18 Cal.3d 728; *Butt v. State of California* (1992) 4 Cal.4th 668.) The Legislature weighed the importance of these two public services and a myriad of other factors and circumstances related to public finances and determined that reclamation districts should be permitted to impose assessments on some public entities, but not school districts. The Legislature is in the best position and has the constitutional authority, even after Proposition 218, to determine when and under what conditions its political subdivisions can impose assessments on each other. Here, the Legislature definitively determined that reclamation districts cannot assess school districts.

The proponents of Proposition 218 wanted to ensure that the cost of benefits conferred on public property were paid with public funds – not by assessments levied on private parties. They were not, however, concerned about which public entity's coffers those funds came out of. Consequently, there is nothing in Proposition 218's text or legislative history that indicates that it was intended to ensure that school districts, rather than reclamation

districts or the State itself, paid for flood control projects. Rather, Proposition 218 left those decisions firmly in the hands of the Legislature, which determined, in this case, that RD 17 cannot assess MUSD to help fund the levee project.

III. CONCLUSION

For the foregoing reasons, the ELA respectfully requests that this Court affirm judgment in favor of MUSD.

Dated: August 14, 2015

By: Megan Burke

Megan A. Burke, Esq.
BURKE, WILLIAMS & SORENSEN, LLP
Attorneys for *Amicus Curiae*
California School Boards Association
Education Legal Alliance

CERTIFICATION PURSUANT TO RULE 8.204(c)

I hereby certify that the foregoing brief contains 6,541 words and thereby complies with California Rules of Court, Rule 8.204(c). In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Dated: August 14, 2015

By: _____

Megan A. Burke, Esq.
BURKE, WILLIAMS & SORENSEN, LLP
Attorneys for Amicus Curiae
California School Boards Association
Education Legal Alliance

OAK #4817-8300-4966 v5

PROOF OF SERVICE

I, Teresa L. Beardsley, declare:

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1901 Harrison Street, Suite 900, Oakland, California 94612-3501. On August 17, 2015, I served a copy of the within document(s):

APPLICATION OF CALIFORNIA SCHOOL BOARDS ASSOCIATION, EDUCATION LEGAL ALLIANCE, FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS AND CROSS-APPELLANTS MANTECA UNIFIED SCHOOL DISTRICT; *AMICUS CURIAE* BRIEF IN SUPPORT THEREOF

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Oakland, California addressed as set forth below.

☒ by placing the document(s) listed above in a sealed GSO Delivery Service envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a GSO Delivery Service agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Thomas H. Keeling
Michael N. Morlan
Freeman Firm
1818 Grand Canal Blvd., Suite 4
Stockton, CA 95207
Phone: 209.474.1818
Fax: 209.474.1245
Email: tkeeling@freemanfirm.com / mmorlan@freemanfirm.com

Attorneys for Defendants, Cross-Complainants and Appellants Reclamation District No. 17 (RD 17 – Mossdale); Governing Board of Reclamation District 17 (RD 17 – Mossdale)

Michael J. Baker David A. Soldani Atkinson, Andelson, Loya, Ruud & Romo 5260 N. Palm Ave., Suite 300 Fresno, CA 93704-2216 Phone: 559.225.6700 Fax: 559.225.3416 Email: dsoldani@aalrr.com	*Attorneys for Plaintiff, Cross-Defendant, Respondent and Cross-Appellant* Manteca Unified School District
San Joaquin County Superior Court 222 E. Weber Ave. Stockton, CA 95202	*Trial Court*
Supreme Court of California 350 McAllister Street San Francisco, CA 94102	*Via Electronic Submission only*, per CRC 8.44(c) and 8.212

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 17, 2015, at Oakland, California.

Teresa L Beardsley

Teresa L. Beardsley

OAK #4842-0893-1366 v1