

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

---

Appeal No. C077906

---

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

v.

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

Defendants, Cross-Complainants and Appellants.

---

On Appeal from the Superior Court of California, County of San Joaquin  
Judge: Bob W. McNatt  
Superior Court Case No. 39-2011-00273848-CU-MC-STK

---

**APPLICATION TO FILE AMICUS CURIAE BRIEF  
AND AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS**

---

DOWNEY BRAND LLP  
SCOTT L. SHAPIRO (Bar No. 173570)  
ANDREA P. CLARK (Bar No. 226310)  
AMANDA M. PEARSON (Bar No. 268186)  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814-4731  
Telephone: 916.444.1000  
Facsimile: 916.444.2100  
sshapiro@downeybrand.com  
aclark@downeybrand.com  
apearson@downeybrand.com

Attorneys for CALIFORNIA CENTRAL VALLEY FLOOD CONTROL  
ASSOCIATION



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b><u>APPLICATION TO FILE AMICUS CURIAE BRIEF</u></b>	
INTRODUCTION.....	1
INTERESTS OF AMICUS CURIAE .....	1
THE AMICUS CURIAE BRIEF WILL ASSIST THE COURT IN DECIDING THE MATTER .....	3
CONCLUSION.....	4
IDENTIFICATION PURSUANT TO CRC 8.200(C)(3) .....	4
<b><u>AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS</u></b>	
ARGUMENT .....	4
1) Section 51200 Is Structured As a General Grant of Authority to Assess All Public Property With an Exemption For Roads, Highways, and School Districts .....	4
2) Prop. 218 Applies to All Assessments and Limits the Circumstances Under Which a Reclamation District Must Exempt Public Roads, Highways, and School Districts From an Assessment .....	6
3) The Legislature Has Separately Expressed Its Intent That Public Agencies Pay Their Fair Share of Public Utility Improvements and Services .....	7
4) The Adverse Consequences of the Trial Court’s Decision Potentially Go Far Beyond the Mere Need to Fill “Gaps” In Funding .....	9
CONCLUSION .....	13
CERTIFICATION OF WORD COUNT .....	14

**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<b><u>Cases</u></b>	
<i>City of Marina v. Board of Trustees of the California State University</i> (2006) 39 Cal.4th 341, 358-359.....	8
<i>San Marcos Water District v. San Marcos Unified School District</i> (1986) 42 Cal.3d 154, 161-165.....	7, 8
<b><u>Statutes</u></b>	
California Streets & Highways Code, Section 5301.....	7
Gov. Code § 54999 .....	8
Gov. Code § 54999.1(h).....	8
Gov. Code § 54999.2 .....	8
Gov. Code § 54999.7(a).....	8
Water Code Section 51200 .....	<i>passim</i>
<b><u>Other Authorities</u></b>	
California Constitution, Article XIIIID, Section 4(a).....	6, 10
California Proposition 218 .....	<i>passim</i>

## **APPLICATION TO FILE AMICUS CURIAE BRIEF**

### **INTRODUCTION**

The Central Valley Flood Control Association (“Association”) respectfully applies for leave to file the accompanying amicus curiae brief in support of defendants and appellants Reclamation District No. 17 and its governing board. This application is timely, made within fourteen (14) days of the filing of the last appellant’s reply brief. (Cal. Rule of Court 8.200(c)(1).)

### **INTERESTS OF AMICUS CURIAE**

The Association submits this brief as the representative of numerous local and regional public agencies and municipalities throughout California’s Central Valley, each of which has a vital interest in reducing flood risk and protecting public safety and economic development.

The Association was formed in 1926 to promote the interests of its members in maintaining effective flood control systems in the Central Valley for the protection of life, property, and the environment. The Association’s membership comprises approximately 80 public agencies, including reclamation districts (but not RD-17), flood control districts, levee maintenance districts, regional flood control agencies, cities, and counties, in addition to several private entities that hold non-voting “associate” memberships.

The Central Valley – and those who reside and work there – produce a significant amount of the nation’s food supply, including approximately fifty percent of the fruit, nuts, and vegetables grown in the United States. While the ongoing drought has been front and center in the minds of many Californians, flood protection, just like water supply, plays a crucial role in allowing the Central Valley economy to flourish: it protects the lives, homes, and businesses of those who reside and work in the Central Valley, helps avoid flood damage to crops and pollution that can result from flood-borne contaminants, and provides greater certainty regarding economic investment in the Valley by reducing the risk of flooding.

The efforts of the Association’s members to maintain, improve, and repair the comprehensive and interconnected system of levees, pumping stations, and bypasses that provide local and regional flood protection, as well as the long-term fiscal stability of the members, will be hampered if other public agencies located within the members’ boundaries are able to avoid paying their fair share of the costs of the flood protection services the Association’s members provide. Accordingly, the Association has determined that this case raises issues of significant concern to its members and thus warrants amicus support.

///

///

///

**THE AMICUS CURIAE BRIEF WILL ASSIST THE COURT**  
**IN DECIDING THE MATTER**

The Association brings to bear the collective experience of numerous local and regional public agencies representing a wide variety of the different types of public safety agencies that engage in flood protection work. On behalf of its members, the Association can provide a broader perspective than that which the parties to this case alone can provide, and, in the accompanying amicus brief, addresses legislative determinations that provide additional insight into the current state of the law regarding the propriety of subjecting one public agency to another public agency's assessments. Given the vast collective flood management and emergency response experience of the Association's membership, the Association is uniquely positioned to provide information regarding public policy concerns and legislative and voter intent in the context of flood protection efforts, as well as the adverse consequences of impairing the ability of agencies that are engaged in ongoing maintenance, improvement, and repair of the comprehensive and interconnected system of levees, pumps, and bypasses that provide flood protection benefits throughout the Central Valley to raise the funds that are necessary for such work to provide those services and benefits.

///

///

## CONCLUSION

For the foregoing reasons, the Association respectfully requests that the Court accept and consider the accompanying Amicus Curiae brief in support of Defendants and Appellants.

## IDENTIFICATION PURSUANT TO CRC 8.200(C)(3)

No party or counsel for a party in this appeal authored this proposed amicus brief, in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity has made a monetary contribution intended to fund the preparation or submission of this brief.

## AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS

### ARGUMENT

#### **1) Water Code Section 51200 Is Structured As a General Grant of Authority to Assess All Public Property With an Exemption For Roads, Highways, and School Districts**

The first part of Section 51200 not only authorizes, but requires reclamation districts to include all publically owned lands in their assessments: “The assessments levied by a district shall include all lands and rights of way within the district, owned by the State or by any city, county, public corporation, or utility district formed under the laws of the State....” The second part of Section 51200 modifies the first part by freeing certain types of property from being subject to assessment: “....other than public roads, highways, and school districts.” To free

certain types of public property from assessment requirements applicable to all other types of property, whether public or private, is to exempt them from the assessment requirements. (Appellant’s Opening Brief at 25, fn. 3 [defining “exemption”].)

Although the second part of Section 51200 modifies the first part by exempting certain types of public property from reclamation district assessments, the first part nevertheless broadly authorizes (and requires) reclamation districts to include “all” public lands and rights of way in their assessments, thus providing reclamation districts with the authority to do so. Put another way, if the second part of Section 51200 was struck, there would be no question that reclamation districts possess authority to assess public roads, highways, and school districts. Of course, Prop. 218 did not strike or repeal any part of Section 51200. But it did nevertheless change the effect of the second part of Section 51200 by amending the California Constitution to specifically state that publically-owned property – a category that surely includes public roads, highways, and school districts – shall not be free from assessment unless the property actually receives no special benefit.

///

///

///

///

**2) Prop. 218 Applies to All Assessments and Limits the Circumstances Under Which a Reclamation District Must Exempt Public Roads, Highways, and School Districts From an Assessment**

Prop. 218, and specifically Section 4(a) of Article XIII D of the California Constitution, modified the effect of section 51200 by providing that public property shall not be exempt from assessment unless it in fact receives no special benefit. Harmonizing Section 51200 and Section 4(a) is a simple task: reclamation districts still must include *all* public lands and rights of way in their assessments, but must exempt public roads, highways, and school districts *if* those properties in fact receive no special benefit from the flood protection services the reclamation district provides.

In its attempt to demonstrate why the exemption set forth in Section 51200 is not altered by Section 4(a), MUSD in effect argues that the people of California, in enacting a constitutional amendment that unquestionably applies to “all assessments” and provides that public property is not exempt from assessment unless clear and convincing evidence shows that the property does not in fact receive a special benefit, instead intended that some public property would continue to be exempt from some assessments even if the property does in fact receive a special benefit. That is a patently absurd interpretation of voter intent, and one that the Court should reject.

Further, there simply is no distinction *in Section 4(a)* between assessment provisions that include discretionary exemptions (such as

Streets & Highways Code section 5301) and assessment provisions that include mandatory exemptions (such as Section 51200). Prop. 218 applies to *all* assessments and thus *all* exemptions from assessment, notwithstanding any other provision of law and regardless of whether the exemptions are framed in mandatory or discretionary terms. The fact that the various assessment statutes that exist today contain different language regarding exemptions does not preclude application of Prop. 218's strict limitation on exemptions of public lands.

**3) The Legislature Has Separately Expressed Its Intent That Public Agencies Pay Their Fair Share of Public Utility Improvements and Services**

Actions taken by the California Legislature subsequent to the California Supreme Court's decision in *San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3d 154, demonstrate that the 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. Those legislative actions provide important context for the policy arguments made by the parties to this action, particularly those made by MUSD.

In *San Marcos*, the California Supreme Court found that a capacity fee imposed by the water district upon the school district was really a special assessment, and that the school district's property (like other public

property) was exempt from assessment absent positive legislative authority therefor. (42 Cal.3d at 161-165.) The Legislature promptly recognized that the *San Marcos* decision “seriously impaired” the fiscal stability of public utility services agencies, as well as the ability of such agencies to finance essential future facilities. (Gov. Code § 54999; *see also City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 358-359.)

To address the problems the *San Marcos* case created, the State Legislature enacted Chapter 13.7 of the Government Code (commencing with section 54999), which expressly permits public entities that provide public utility service to impose capital facilities fees (which are in fact assessments, under *San Marcos*) upon other public agencies, and expressly requires the charged public agency to pay the fees so imposed. (Gov. Code § 54999.2.) Today, Chapter 13.7 further provides that any public agency providing public utility service may impose fees therefor upon other public agencies that receive the public service, and also expressly requires the charged public agency to pay the fees so imposed (Gov. Code § 54999.7(a).) For the purpose of these provisions, “public utility service” includes flood control and drainage services – precisely the type of services that reclamation districts typically provide. (Gov. Code § 54999.1(h).)

The Legislature, like the people in approving Prop. 218, has thus struck a different balance than the *San Marcos* court, and has decided that

public agencies that provide utility services require financial stability, and that the need for those agencies to finance public utility facilities outweighs the interests of other public agencies in obtaining flood protection services at no cost. That decision is exceedingly reasonable, because allowing public agencies to receive benefits at no cost not only impairs the fiscal stability and service capabilities of a public utility agency, but also potentially affects every single individual, business, or public agency that does pay their fair and proportional share of the costs necessary to provide flood protection services and benefits. This is certainly true of flood control services, because, as discussed below, in the flood control context a single weak link in a complex and interdependent flood control system can render the entire flood control system ineffective.

To be clear, the Association takes no position regarding whether the provisions of Chapter 13.7 actually apply to the facts at hand. Regardless of whether they apply here, they are nonetheless necessary to a complete understanding of the current state of the law regarding the ability of one public agency to impose assessments or charges upon another public agency that benefits from the first agency's services.

**4) The Adverse Consequences of the Trial Court's Decision Potentially Go Far Beyond the Mere Need to Fill "Gaps" In Funding**

Including public property that receives benefits from the services provided by a reclamation district in the reclamation district's assessments

is not only fair to the assessed agency, the assessing agency, and the other beneficiaries who pay their own fair and proportional shares of the services provided, but also comports with the intent of California voters in approving Prop. 218. Perhaps most importantly, public safety concerns dictate against allowing public agencies to be free riders in the context of funding flood protection services provided by reclamation districts. Since voters approved Prop. 218's constitutional amendments in 1996, reclamation districts throughout California have relied on Section 4(a)'s clear prohibition against exempting public property from assessment unless clear and convincing evidence shows that the property in fact receives no special benefit. If reclamation districts suddenly become unable to require other public agencies to pay fair and proportional shares of the costs of providing flood protection benefits, the districts will face gaps in their flood protection funding. Filling such gaps is not as simple as forcing other members of the public to bear the burden of subsidizing the non-paying public agencies. Doing so would violate Prop. 218's proportionality requirement, and thus be unconstitutional. (Cal. Const., art. XIID, § 4(a) ("No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."))

If a flood control agency cannot fill funding gaps, its only option will be to cut costs and services, thus potentially reducing the benefits to

the individuals, businesses, and public agencies that are paying their fair shares of reclamation district assessments. The need to reduce services may force a flood control agency to borrow money, which increases project costs, postpone levee maintenance and repair of known critical sites, phase levee improvements over longer periods despite the annual risk of flooding, or completely forgo the construction of some flood control facilities. Such alternatives are exceptionally troubling in the context of flood protection, because once flooding begins it can be almost impossible to contain, and the consequences are both costly to repair and often life threatening. For example, a single breach in a levee puts at risk not just the property immediately adjacent to the site of the breach, but *all* property behind the levee that is susceptible to flooding, and a small breach can quickly grow into a large breach as flood waters erode the remaining levee infrastructure. Floods have devastating economic and public safety impacts in the areas they inundate. Lives and homes can be lost, businesses and crops can be irreparably damaged, roads can be washed out, and flood waters can contaminate drinking water supplies and soil.

Improper restrictions on the ability of a flood control district to raise funds for flood protection purposes thus pose significant public safety and economic risks that far outweigh any advantage society might receive as a

result of shielding public agencies from flood protection assessments.<sup>1</sup>

Local and regional flood control agencies have no ability to ensure that the potential adverse consequences of insufficient funding affect only those who fail to contribute to the costs of maintaining, improving, and repairing the levees, pumps, and other infrastructure that provides flood protection benefits. In other words, because floods recognize no property boundaries, if a flood occurs there is no way for a flood control agency to shield from harm those who have financially contributed to flood protection services (and the resulting public safety benefits) by consistently paying their assessments. To add insult to injury, if a reclamation agency is found liable for flood damage, it is the taxpayers who will ultimately foot the bill!<sup>2</sup>

California taxpayers are better served when public agencies are required to pay their fair shares of the costs of flood protection because otherwise the result will be funding gaps that will impair the ability of reclamation districts to construct, maintain, and improve the facilities necessary to reduce the risk of flood damage occurring in the first place.

///

///

---

<sup>1</sup> Further, it is difficult to identify any such advantage, assuming that the public agency's property does in fact benefit from the project.

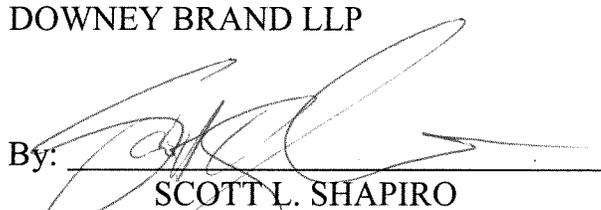
<sup>2</sup> In addition, being forced to pay a damages award could further impair the ability of a flood control agency to fund its future flood protection efforts, thus potentially exposing people and property to flood risks that would not otherwise exist.

## CONCLUSION

Constructing flood protection and drainage infrastructure that will prevent floods for years to come is unquestionably preferable to waiting for flood damage and loss of life to occur and then attempting to pick up the soggy pieces that are left behind. And because the systems of levees, pumps, drainage ditches, bypasses and other flood control facilities in the Central Valley are complex and interdependent, it is imperative that agencies engaged in flood protection not be unduly financially constrained and hampered in their efforts to provide the flood protection benefits associated with services rendered.

DATED: July 30, 2015

DOWNEY BRAND LLP

By: 

SCOTT L. SHAPIRO

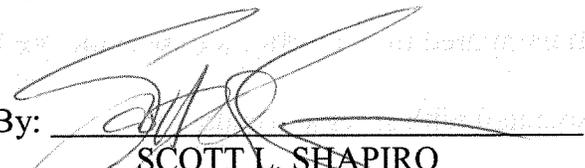
Attorneys for *Amicus Curiae* California  
Central Valley Flood Control Association

**CERTIFICATION OF WORD COUNT**

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the amicus curiae brief of the Central Valley Flood Control Association was produced using 13-point Roman type, including footnotes, and contains approximately 2,810 words, according to the word count of the computer program used to prepare the brief.

DATED: July 30, 2015

DOWNEY BRAND LLP

By: 

SCOTT L. SHAPIRO

Attorneys for *Amicus Curiae* California  
Central Valley Flood Control Association

**PROOF OF SERVICE**

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is Downey Brand LLP, 621 Capitol Mall, 18th Floor, Sacramento, California, 95814-4731. I served the foregoing document entitled:

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND  
AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS**

**Service by United States Mail:**

by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, DOWNEY BRAND LLP, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service at Sacramento County, California, the same day in the ordinary course of business.

**Attorneys for Plaintiff, Cross-Defendant, Respondent and  
Cross-Appellant Manteca Unified School District:**

Michael J. Baker  
David A. Soldani  
Atkinson, Andelson, Loya, Ruud & Romo  
5260 N. Palm Avenue, Suite 300  
Fresno, CA 93704-2216

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

Thomas H. Keeling  
Michael N. Morlan  
Freeman Firm  
1818 Grand Canal Boulevard, Suite 4  
Stockton, CA 95207

**Trial Court (Per CRC 8.212(c)(1):**

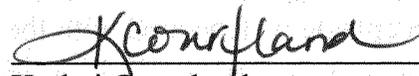
Superior Court of California  
San Joaquin County  
222 E. Weber Avenue  
Stockton, CA 95202

**Via Electronic Submission. per CRC 8.44(c) and 8.212:**

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

The acts described above were undertaken and completed in Sacramento County on July 30, 2015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 30, 2015, at Sacramento, California.

  
\_\_\_\_\_  
Kathei Courtland