

420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Voice (530) 432-7357  
Fax (530) 432-7356

**COLANTUONO  
HIGHSMITH  
WHATLEY, PC**

Michael G. Colantuono  
(530) 432-7359  
MColantuono@chwlaw.us

Our File No. 10000.1191

October 29, 2018

**VIA TRUEFILING**

The Honorable Chief Justice Tani Cantil-Sakauye and  
Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4797

**Re: *Paradise Irrigation District v. Commission on State Mandates*,  
Third Appellate District, Case No. C081929, 27 Cal.App.5th 1056:  
Request for Depublication (Cal. Rules of Court, rule 8.1125(a)(1))**

Honorable Chief Justice Cantil-Sakauye and Associate Justices:

**Introduction.** The League of California Cities ("League") and the California State Association of Counties ("CSAC") respectfully request decertification of the published opinion in the matter referenced above. The Opinion filed October 1, 2018 should be decertified for publication because it:

- applies a fee statute applicable to one kind of water district as though it universally applies to all water districts; and
- confuses the procedure for approval of property related fees under Article XIII D, section 6 of the California Constitution ("section 6") with that for assessments under Article XIII D, section 4 ("section 4"), likely due to section 6's requirement that standby fees be approved as assessments under section 4.

These arguments are stated at greater length in the petition for rehearing now pending before the Court of Appeal.

**Interest of Amici.** The League is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and

welfare of their residents, and to enhance the quality of life for all Californians. CSAC is a nonprofit corporation. CSAC's membership consists of the 58 California counties. The League and CSAC ("Amici") filed a joint amicus brief on the merits of the appeal before the Third District.

This Opinion will adversely impact Amici's local government members, many of which recover the costs of water service under various fee statutes subject to sections 4 and 6. Amici desire clarity in a complex area of the law. Depublishing this Opinion will eliminate a confusing and misleading precedent.

**Argument.** THE OPINION APPLIES A FEE AUTHORIZING ONE TYPE OF WATER DISTRICT TO IMPOSE STANDBY FEES AS IF IT EVIDENCED UNIVERSAL AUTHORITY FOR ALL WATER DISTRICTS TO IMPOSE A RANGE OF FEES. The Opinion analyzes Water Code section 35470 as though it applies to all parties when, in fact, it only applies to one. (*Paradise Irrigation Dist.*, *supra*, 27 Cal.App.5th 1056 [p. 8].) Water Code section 35470 authorizes California Water Districts to impose fees on the tax roll for water service. Despite the confusing label, a California Water District is a specific type of water district, not a category encompassing them all. (Wat. Code, § 34013 [defining "district" for purposes of the Division 13 of the Water Code].) Of the six parties to this case, only Biggs-West Gridley Water District is a California Water District. The Opinion's conclusion is therefore overbroad because it applied Water Code section 35470 to all parties, including those formed under other statutes.

THE OPINION ANALYZES A FEE UNDER WATER CODE SECTION 35470 UNDER SECTION 6 THAT OUGHT TO BE GOVERNED BY SECTION 4. Article XIII D regulates both assessments on real property, under section 4, and property related fees, under section 6. Section 6, subdivision (b)(4), however, requires one kind of fee — a standby fee — to be adopted using the procedures of section 4. This has sown the seeds of confusion in the Opinion. The two sections require different procedures. A majority of affected property owners may submit protests to defeat a new **fee** under section 6. (Cal. Const., art. XIII D, § 6, subd. (a)(2).) In contrast, a majority of property owners must approve or reject an **assessment** under section 4. (Cal. Const., art. XIII D, § 4, subd. (e).) Silence is consent as to the former, but not the latter and, of course, many customers and property owners are typically silent in such proceedings. By failing to distinguish assessments from fees (and both from standby fees treated as assessments), the Opinion invites confusion. (*Paradise Irrigation Dist.*, *supra*, 27 Cal.App.5th 1056 [p. 8].)

The Honorable Chief Justice Tani Cantil-Sakauye  
October 29, 2018  
Page 3

**Conclusion.** As the Opinion risks confusing the law on questions which do not lie at the core of its construction of Article XIII B of our Constitution — the Gann Limit — it ought not to remain published. Accordingly, unless the Court of Appeal grants rehearing to address these issues, Amici respectfully ask this Court to decertify it for publication.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael G. Colantuono". The signature is fluid and cursive, with a large, sweeping "S" shape at the end.

Michael G. Colantuono  
SBN 143551

MGC:cwh  
Enclosure      Proof of Service

**PROOF OF SERVICE**

*Paradise Irrigation District, et al. v. Commission on State Mandates, et al.*

Sacramento County Superior Court Case No. 34201580002016

Third Appellate District Case No. C081929

I, Ashley A. Lloyd declare:

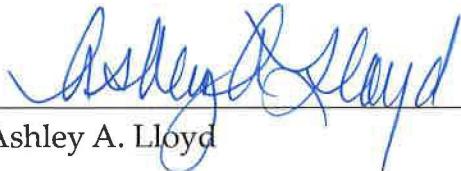
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091. My email address is: ALloyd@chwlaw.us. On October 29, 2018, I served the document(s) described as [list documents] on the interested parties in this action addressed as follows:

**SEE ATTACHED LIST**

- ☒ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. 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 at Grass Valley, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 29, 2018, at Grass Valley, California.

  
\_\_\_\_\_  
Ashley A. Lloyd

**PROOF OF SERVICE**

*Paradise Irrigation District, et al. v. Commission on State Mandates, et al.*

Sacramento County Superior Court Case No. 34201580002016

Third Appellate District Case No. C081929

Dustin C. Cooper  
Minasian Meith Soares Sexton &  
Cooper, LLP  
1681 Bird Street  
P.O. Box 1679  
Oroville, CA 95965

*Attorneys for Plaintiff and Appellant  
Paradise Irrigation District, et al.*

Alexis K. Stevens  
Somach Simmons & Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, CA 95814

*Attorneys for Plaintiff and Appellant  
Biggs-West Gridley Water District, et al.*

Matthew Bradley Jones  
Commission on State Mandates  
950 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

*Attorneys for Defendant and Respondent  
Commission on State Mandates*

Peter Hsueh-Kang Chang  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

*Attorneys for Real Party in Interest and  
Respondent Department of Water  
Resources, et al.*

Alison Leary, Deputy General Counsel  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

*Attorneys for Amicus Curiae for Appellant  
League of California Cities*

Jennifer B. Henning  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941

*Attorneys for Amicus Curiae for Appellant  
California State Association of Counties*

Sloan Robert Simmons  
Lozano Smith  
One Capitol Mall, Suite 640  
Sacramento, CA 95814

*Attorneys for Amicus Curiae for Appellant  
California Special Districts Association,  
et al.*

Clerk of the Court  
Third Appellate District  
914 Capitol Mall,  
Sacramento, CA 95814

Clerk of the Court  
Sacramento County Superior Court  
720 9th Street  
Sacramento, CA 95814