SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**June 21, 2013, 9:00 a.m.** **HON. ALLEN SUMNER**	**DEPT. NO** **CLERK**	**42** **M. GARCIA**
CITY OF SAN JOSE, **Petitioner,** **v.** **VINOD K. SHARMA, et al.** **Respondents.**		**Case No.: 34-2012-80001190**	
Nature of Proceedings:	**PETITION AND CROSS-PETITION FOR WRIT OF MANDATE**		

Following is the court's tentative ruling granting in part and denying in part the petition for writ of mandate by the City of San Jose ("City"), and denying the cross-petition by the County of Santa Clara ("County"), scheduled for June 21, 2013, at 9:00 a.m., in Department 42.[1]

INTRODUCTION

With the dissolution of redevelopment agencies, property tax revenue that would have been allocated to a redevelopment agency is now generally allocated to the "successor agency" to pay the former redevelopment agency's enforceable obligations. Funds left over are now allocated to other local agencies. (Health & Saf. Code § 34183.)[2]

This case poses two questions:

1. Is the City, successor agency to the San Jose Redevelopment Agency, entitled to receive the tax increment portion of a property tax levied in 1944 to fund the County's retirement obligations? The court finds that it is.

[1] The court issued a tentative ruling April 4, 2013, addressing the "PERS levy" discussed in section one. This matter was heard April 5, 2013. Thereafter, the parties submitted briefing on the "passthrough" issue discussed in section two. The court issues this revised ruling addressing both issues.

[2] All statutory citations are to the Health and Safety Code, unless otherwise indicated.

2. Is revenue that would be allocated to the County pursuant to a "passthrough agreement" between the County and former redevelopment agency subject to payment of ***any*** debt of the redevelopment agency, or only as needed to pay the agency's ***bond*** debt? The court finds the County's passthrough agreement is subject only to payment of the agency's bond debt.

I
PERS LEVY

HISTORICAL BACKGROUND

More than a bit of history is necessary to understand the parties' dispute.

PERS Levy

In 1944, the voters of Santa Clara County adopted County Measure 13, authorizing the County to participate in what was then the State Employees' Retirement System (now the Public Employees Retirement System ["PERS"]). Measure 13 enacted "a special tax sufficient to raise the amount required to provide sufficient revenue" to meet that obligation (hereafter "PERS levy"). (Req. for Jud. Not.; Metzker Decl., Ex. A.)[3]

The PERS levy is an ad valorem tax on real property in Santa Clara County. (See, e.g., Sharma Decl., ¶ 5; Third Sharma Decl., ¶¶ 4-6, Ex. A). The actual tax rate has varied from year to year, depending on the amount due to PERS.[4] (Sharma Decl., ¶¶ 4-5.)

The Community Redevelopment Law

In 1945, the Legislature passed the Community Redevelopment Law, authorizing formation of redevelopment agencies to remediate urban decay. (See *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 245-46 [hereafter *Matosantos*].)

Tax Increment Financing

Because redevelopment agencies were not authorized to levy taxes, in 1952 the voters amended the California Constitution and created "tax increment financing" to fund redevelopment agencies. (Art. XVI, § 16; Health & Saf. Code § 33670.) According to the ballot language, the amendment provided "that taxing agencies shall continue to

[3] The County's request to judicially notice the text of County Measure 13 is granted.

[4] In 1985, the Legislature capped the rate of the PERS levy (and similar retirement levies) at 0.0388 percent. (Rev. & Tax. Code § 96.31.) Thereafter, the rate continued to fluctuate – subject to the cap – until approximately 2002. Since then, it has remained at the maximum 0.0338 percent. (Sharma Decl., ¶¶ 4, 5, Ex. A.) The levy currently covers approximately 27 percent of the County's retirement obligations. (Sharma Decl., ¶ 5.)

receive tax revenues based on assessed value of such property at time of approval of redevelopment plan."[5] (Supp. Req. for Jud. Not., Ex. A.) Our Supreme Court described tax increment financing as:

> [T]hose public entities entitled to receive property tax revenue in a redevelopment project area (the cities, counties, special districts, and school districts containing territory in the area) are ***allocated a portion*** based on the assessed value of the property prior to the effective date of the redevelopment plan. ***Any*** tax revenue in ***excess*** of that amount – the ***tax increment*** created by the increased value of project area property – goes to the redevelopment agency for repayment of debt incurred to finance the project. [Citations.] In essence, ***property tax revenues for entities other than the redevelopment agency are frozen***, while revenue from any increase in value is awarded to the redevelopment agency on the theory that the increase is the result of redevelopment.

(*Matosantos, supra*, 53 Cal.4th at 246-47 [emphasis added].)

Article XVI, section 16, states the tax increment revenues used to finance redevelopment agencies applied to "***all*** levies on an ad valorem basis upon land or real property." (Emphasis added.)

San Jose Redevelopment Agency

In 1956, the City established the San Jose Redevelopment Agency ("Agency") pursuant to the Community Redevelopment Law. (Opp. at 4:21-22.) Thereafter, the Agency incurred debt to finance improvement projects. This debt was secured by the redevelopment agency's "tax increment" revenues. (Pet. ¶¶ 6, 7; see also, generally, Admin. Rec., Exs. 7-44.)

Since 1956, ***all*** incremental property tax revenue associated with the PERS levy was distributed to the Agency.[6]

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[5] The County's request to judicially notice the ballot pamphlet materials for Proposition 18 from the November 4, 1952, election is granted.

[6] Both sides agree. (See City's Opposition Brief at 9:21-23 and County's Opening Brief at 3:21-24.) As explained by the Supreme Court in *Matasantos*, property tax revenues for entities other than the Agency were frozen at pre-redevelopment plan levels, with the entire incremental, or excess, portion of the tax going to the Agency. In other words, the County has ***always*** received the full amount of the PERS levy – but it has received that full amount on property values that were frozen in the year any redevelopment plan(s) went into effect.

Proposition 13

In 1976, the voters passed Proposition 13, adding article XIII A to the California Constitution, which limited total ad valorem taxes on real property to 1 percent of value. (Art. XIII A, §1(a).) Importantly, this limit did not apply to certain ad valorem property taxes approved by voters ***prior*** to Proposition 13. (Art. XIII A, § 1(b).) Thus, the PERS levy, approved in 1944, was not affected by Proposition 13. (See e.g., *Carman v. Alvord* (1982) 31 Cal.3d 318, 333.) In excluding taxes like the PERS levy from the 1 percent limit, Proposition 13 made no reference to "special" versus "general" taxes. The sole determination is whether the tax was approved prior to passage of Proposition 13.

Proposition 62

In 1986, the voters adopted Proposition 62, limiting the ability of local governments to adopt new general or special taxes, or to increase existing taxes. Local governments may now only impose general taxes if approved by a majority of the electorate; special taxes must be approved by two-thirds of the electorate. (Gov. Code §§ 53722, 53723.) The ballot argument in favor of Proposition 62 explains, "A YES vote on Proposition 62 gives back your right to vote on any tax increases proposed by your local governments."[7]

Proposition 218

In 1996, the voters approved Proposition 218, adding article XIII C to the California Constitution to "protect[] taxpayers by limiting the methods by which local governments can exact revenue from taxpayers without their consent." [8] Article XIII C provides local governments may not impose or increase any general or special tax unless submitted to the electorate and approved by a majority (general tax) or two-thirds vote (special tax). (Art. XIII C, § 2.) Article XIII C defines the terms "general tax" and "special tax," and provides all taxes imposed by local governments shall be deemed to be either a general or special tax. (Art. XIII C, § 1, sec. 2(a).)

Dissolution of Redevelopment Agencies

In 2011, the Legislature enacted AB1X26 ("AB 26"), dissolving redevelopment agencies and providing for the winding down of their affairs. In December 2011, the California Supreme Court upheld the constitutionality of AB 26 in *Matosantos*, *supra*, 53 Cal.4th 231. In June of 2012, the Legislature adopted AB 1484 modifying the provisions in AB 26. The court refers to AB 26 and AB 1484 collectively as the "Dissolution Law."

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[7] Ballot Pamphlet, General Election (Nov. 4, 1986) argument in favor of Prop. 62, p. 42, available at http://librarysource.uchastings.edu/ballot_pdf/ 1986g.pdf.

[8] Ballot Pamphlet, General Election (Nov. 5, 1996) text of Prop. 218, Right to Vote on Taxes Act, § 2, p. 108, available at http://librarysource.uchastings.edu/ballot_pdf/1996g.pdf.

While the Dissolution Law eliminated redevelopment agencies, it established "successor agencies" responsible for making payments and otherwise performing the enforceable obligations of the former redevelopment agencies (§ 34177.) The City is the successor agency for the Agency.

Respondent Santa Clara County Auditor-Controller Vinod Sharma determines the amount of property tax revenue that would have been allocated to the Agency. This revenue is then allocated to the City as successor agency to pay the Agency's enforceable obligations. Any remaining funds are allocated to other local taxing entities within Santa Clara County. (§§ 34182, 34183.)

DISCUSSION

The City challenges the decision of the County, through its Auditor-Controller Sharma, to withhold the tax increment portion of the property taxes attributed to the PERS levy. The City argues these revenues were always paid to the Agency, and thus are due to the City as successor agency to discharge the former Agency's obligations. The City seeks a writ of mandate directing Sharma to pay it these revenues, estimated at $6.7 million.[9] (Sharma Decl., ¶ 14.) The City also requests injunctive and declaratory relief essentially mirroring its request for mandate relief.[10]

The County, both in opposition to the City's petition and by cross-petition, argues ***all*** property tax revenues attributable to the PERS levy are "special taxes" that may ***only*** be used for the specific purpose of meeting the County's retirement obligation to its employees, as authorized by the voters in 1944.

The County's argument that somewhere over the intervening years the law changed, albeit unnoticed by the agencies involved, does not persuade.

1. The tax increment portion of the PERS levy was historically included in the Agency's revenues

Since 1952, with the voters' adoption of article XVI, the tax increment or increased value of the PERS levy attributable to the Agency has gone to fund the Agency's operations. (See Pet. Opp. Brief at 9:21-23; Cross-Pet. Opening Brief at 3:21-24.)

This is consistent with the plain wording of article XVI. Again, the division and allocation of taxes between redevelopment agencies and other local entities contemplated

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[9] The property tax revenues attributable to the PERS levy have been placed in an impound account pending determination of this matter. (Sharma Decl., ¶ 13.)

[10] The City's claim regarding additional "passthrough" revenues it asserts the County is withholding is discussed below.

The City's other claims (damages claimed for breach of contract, breach of fiduciary duty, negligence, and interference with contract) would not be tried by this writ department.

by article XVI applies to ". . . ***all*** levies on an ad valorem basis upon land or real property." (Cal. Const., Art. XVI, § 16.) No distinction is made between "general" levies and "special" levies. The court gives the word "all" its usual and ordinary meaning, interpreting this Constitutional provision to mean precisely what it says: ***All*** ad valorem property taxes, ***including*** the PERS levy, are subject to division between local entities and redevelopment agencies. (*People v. Benson* (1998) 18 Cal.4th 24, 30; *Ombudsman Services of Northern California v. Superior Court* (2007) 154 Cal.App.4th 1233, 1244.)

Because the PERS levy is an ad valorem property tax, the Agency was entitled pursuant to both article XVI of the California Constitution and section 33670 to the "excess" or "incremental" portion of the PERS levy. For ***over 50 years***, the Agency in fact received the tax increment revenues from the PERS levy for the Agency's operations.

2. Proposition 62 did not change allocation of the PERS levy

The County argues Government Code section 53724, added in 1986 by Proposition 62, now controls allocation of the tax increment portion of the PERS levy. Section 53724, subdivision (e), provides "the revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever." The County argues this language mandates that ***all*** of the PERS levy, including the tax increment, must be used only to fund the County's retirement obligations. The court is not persuaded.

First, nothing in the ballot arguments on Proposition 62 indicates the voters intended its provisions to amend article XVI by limiting financing of redevelopment agencies to only tax increment revenues associated with ***general*** property taxes, rather than "***all***" property taxes.[11] Indeed, assuming arguendo that Government Code section 53724 was intended to amend article XVI, it is axiomatic that the Constitution cannot be amended by a statute. (*Smith v. Fair Employment & Housing Commission* (1996) 12 Cal. 4th 1143, 1187, fn.4; see also *Jacob B. v. County of Shasta* (2007) 40 Cal. 4th 948, 964 (statutes subordinate to constitution).

Second, nothing in the ballot arguments indicates the voters intended Proposition 62 to have ***any*** effect on either redevelopment agencies or the manner in which the tax increment is allocated. Instead, Proposition 62's sole purpose was to prohibit local government from imposing new taxes (or increasing old taxes) unless approved by the voters. (See *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 235 ("The manifest purpose of Proposition 62 as a whole was to increase the control of the citizenry over local taxation by requiring voter approval of all new local taxes imposed by all local governmental entities."].) Moreover, after passage of Proposition 62 and adoption of Government Code section 53724, the County continued its historical practice of allocating to the Agency the tax increment revenues from "***all***"

[11] As noted above, the Ballot Pamphlet, which includes the ballot arguments for and against, is available at http://librarysource.uchastings.edu/ballot_pdf/ 1986g.pdf.

ad valorem property taxes. (Pet. Opp. Brief at 9:21-23; Cross-Pet. Opening Brief at 3:21-24.)

Third, there is no indication the voters intended either Proposition 62 or Government Code 53724 to apply retroactively. Absent any such expressed intent, under general principles of statutory construction Proposition 62 is deemed to apply prospectively only.[12] (*Evangelatos v. Superior Cour*t (1988) 44 Cal.3d 1188, 1193-94, 1208–1209 [absent clear intent to contrary, statutes apply prospectively only]; *Strauss v. Horton* (2009) 46 Cal.4th 364, 470 [this principle applies to legislation, initiatives, and constitutional amendments].)

Accordingly, the court concludes Government Code section 53724 did not retroactively prohibit the Agency (or its successor agency) from receiving the incremental portion of the PERS levy it had been receiving for approximately 30 years. Nor does it appear section 53724 has ever been so construed.[13]

3. Proposition 218 did not change allocation of the PERS levy

As with Proposition 62, there is no indication the voters intended Proposition 218 or article XIIIC to have any effect on the allocation of "***all***" property tax increment between local entities and redevelopment agencies, or that they intended it to be applied retroactively.[14] The stated purpose of Proposition 218 was to give voters "the right to vote on tax increases."[15] (See also *Borikas v. Alameda Unified School Dist.* (2012) 211 Cal.App.4th 833, fn13 [describing purpose of Proposition 218 as imposing significant limits on ability of local governments to impose "assessments, fees and charges."].) Enactment of article XIIIC in 1996 to limit the taxing authority of local governments following Proposition 13 simply has no bearing on the allocation of tax increment revenues from the PERS levy, as was authorized by article XVI adopted by the voters in 1952.

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[12] Neither the arguments for and against, nor the Legislature Analyst's analysis, make any mention of the retroactivity question. This too supports the conclusion Proposition 62 applies only prospectively. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212 [where ballot arguments make no mention of retroactivity, "there is no reason to believe that the electorate harbored any specific thoughts or intent with respect to the retroactivity issue at all," and measure thus subject to general rule that statutes apply prospectively only absent clear intent otherwise].)

[13] Neither party has cited any case discussing how "special taxes" are to be allocated between local entities and redevelopment agencies. The court's independent research has not turned up any cases either.

[14] As noted above, the Ballot Pamphlet, which includes the arguments for and against Proposition 218, is available at http://librarysource.uchastings.edu/ ballot_pdf/ 1996g.pdf. As with Proposition 62, no mention is made of the retroactivity issue.

[15] See Ballot Pamphlet, General Election (Nov. 5, 1996) Argument in Favor of Proposition 218 by Joel Fox, Jim Conran, and Richard Gann, p. 76.

4. The Dissolution Law did not change allocation of the PERS levy

The County argues the Legislature, in enacting the Dissolution Law, recognized that special taxes were ***never*** meant to be included in the calculation of tax increment, citing the second sentence of section 34172, subdivision (d). That sentence provides, "Amounts in excess of those necessary to pay obligations of the former redevelopment agency shall be deemed to be property tax revenues within the meaning of ***subdivision (a)*** of section 1 of article XIII A of the California Constitution." (Emphasis added.) According to the County, because the PERS levy falls within subdivision (b) rather than subdivision (a) of article XIII A, section 1, this wording establishes that the Legislature intended to exclude special taxes from the calculation of tax increment now allocable to redevelopment agencies following the Dissolution Law. This one sentence cannot bear the weight of the County's argument, for two reasons.

First, this sentence deals only with revenue "in excess of" the amount necessary to pay the former redevelopment agency's debts. But the amount necessary to pay the former redevelopment agency's debts is the ***only*** amount allocable to the successor agency. Thus this sentence simply does not address what monies are allocable to the former redevelopment agency or its successor agency.

Second, the County's argument is belied by the first sentence of section 34172, subdivision (d), which provides successor agencies "shall" be allocated revenues "equivalent to those that would have been allocated" to the former redevelopment agency pursuant to subdivision (b) of section 16 of article XVI. As discussed above, subdivision (b) (along with section 16 in its entirety) contemplates the division of "***all***" property tax revenues between the local entities and the redevelopment agencies, and makes no exception for "special" property tax revenues.

CONCLUSION

The County's argument ignores over half a century of construction and application of California law governing allocation of tax increment financing. The voters adopted article XVI in 1952, defining tax increment revenues as including proceeds from ***all*** ad valorem property taxes. Nothing in the intervening adoption of Propositions 13, 62 or 218 evidences any intention by the voters to affect the fundamental change in tax increment financing now urged by the County.

While the passage of time alone is not determinative, it does counsel restraint in the court's interpretation. (See, e.g., *Weber v. McCleverty* (1906) 149 Cal. 316, 319 [courts are loathe to establish new application and interpretation of statute in face long established contrary understanding and usage]; *SBAM Partners, LLC v. Wang* (2008) 164 Cal.App.4th 903, 912 [same].) Paraphrasing Chief Justice John Marshall's observation two centuries ago: A question of constitutional interpretation, if not put to rest by long-standing practice, ought to nonetheless receive considerable impression from that practice. An interpretation of the Constitution, deliberately established by legislative

acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded. (*McCulloch v. The State of Maryland* (1819) 17 US 316, 401.)

For the foregoing reasons, the City's petition for writ of mandate is granted as to the PERS levy and the County's cross-petition is denied. Controller-Auditor Sharma is directed to place that portion of the PERS levy formerly allocable to the Agency in the Redevelopment Property Tax Trust Fund for distribution pursuant to section 34183.[16]

II
PASSTHROUGH AGREEMENT

BACKGROUND

Passthrough Agreement

Prior to enactment of the Dissolution Law, the County and Agency entered into a passthrough agreement ("Agreement"), pursuant to which the Agency agreed to pay a portion of its tax increment revenues to the County. (City Supp. Brief at 11; County Supp. Brief at 8-9; Pet. ¶ 8; Agreement, Section II, pp. 3-7.) However, the Agreement declared the County's right to payment would be subordinated to the Agency's other debts:

> The County hereby agrees that any obligation for the payment of money by the Agency to the County, whether pursuant to this Agreement or otherwise , . . . is subordinate . . . to all of the Agency's loans, bonds or other indebtedness . . . . pursuant to the provisions of the Health and Safety Code.

(Section VII.B., p. 13.) Put simply, under the Agreement the County would receive no tax increment revenues until all the Agency's debts were paid.

Did the Dissolution Law change this?

Dissolution Law

Under the Dissolution Law, the respondent auditor-controller places the property taxes (or tax increment) that would have gone to the Agency into the new Redevelopment Property Tax Trust Fund ("Trust Fund"). (§ 34182(c)(1).) The monies in the Trust Fund are then allocated pursuant to two new distribution formulas.

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[16] In its supplemental brief, the City requests that Controller-Auditor Sharma be ordered to deposit revenues generated by similar special taxes imposed for the Santa Clara Valley Water District State Water Project and the Santa Clara Valley Water District Zone W-1 Bond. (Supplemental Brief, 13:18-28.) The County does not oppose this request. (Supplemental Reply Brief, 11:13-18.)

The court declines to address these other two levies. They were not addressed in the parties' briefing and the Santa Clara Valley Water District is not a party to this action.

When there are sufficient funds to pay all the former Agency's obligations, the funds are allocated pursuant to section 34183, subdivision (a), in the following order, known as the "waterfall":

1. The auditor-controller's administrative costs.

2. Statutory and contractual passthrough payments to local entities.

3. Payments listed on the ROPS, in the following order:

    a. Debt service payments.

    b. Payments on revenue bonds (if revenues pledged are insufficient and if tax increment revenues also pledged for repayment).

    c. Other debts and obligations listed on the ROPS required to be paid from tax increment revenue.

4. The successor agency's administrative costs.

5. Residual monies distributed to local agencies.

Here, the parties agree there are ***not*** sufficient funds to pay all the Agency's obligations.[17] (County Supp. Brief at 1:11-15; City Supp. Brief at 4:3-6.) In that case, section 34183, subdivision (b), provides a second formula, known as the "reverse waterfall," which deducts the deficiency in the following order:

1. From the "residual monies" to be distributed to local entities.

2. From the successor agency's administrative costs.

3. From payments made pursuant to any ***passthrough*** agreement, subject to two caveats:

    a. First, the deficiency shall only be deducted if the passthrough agreement was made subordinate to debt service payments required for the Agency's enforceable obligations. (§ 34183(b).)

    b. Second, if the passthrough agreement was made subordinate to the Agency's enforceable obligations, then funds for servicing the

[17] The Agency has $128 million in enforceable obligations, and over $1 million in administrative costs. (Pet., Ex. C.) It also owes between $18 and $19 million in passthrough payments. (Pet., Ex. K.) There is less than $85 million in the Trust Fund. (Pet., Exs. D and K.) It would thus appear that regardless of the resolution of this action, over $60 million of the Agency's obligations will not be paid from the Trust Fund.

Agency's ***bond debt*** may be deducted from the passthrough payments. (*Id.*)

DISCUSSION

The parties agree the County's passthrough payment is subordinated to pay the Agency's ***bond debt***. (County Opp. at 7:13-16; City Supp. Brief at 8:10-14.) The issue is whether it is also subordinated to pay the Agency's ***non-bond debt***.

The City argues ***all*** of the Agency's enforceable obligations must be paid before the County may receive any payment pursuant to the parties' Agreement. In support of its construction of section 34183, the City cites the Legislature's intent that all the Agency's enforceable obligations be paid, and the wording of the parties' Agreement. The City argues that construing the Dissolution Law as modifying the parties' Agreement to allow the County to receive funds before all the Agency's non-bond debt is paid would be an impermissible impairment of contract.

The County argues payment it would receive under the parties' Agreement is only subordinated as needed to pay the Agency's ***bond*** debt***.*** The County cites the wording of the Agreement, its construction of section 34183 and the Legislature's intent in enacting the Dissolution Law to redirect property tax revenue from redevelopment agencies to other local taxing agencies, such as counties and schools.

The court concludes the parties' Agreement and Dissolution Law subordinate the County's right to payment only as necessary to pay the former Agency's bond debt.

1. The Parties' Agreement Anticipated Future Legislation

Again, the Agreement provides, in relevant part:

> The County hereby agrees that any obligation for the payment of money by the Agency to the County, whether pursuant to this Agreement or otherwise, . . . is subordinate . . . to all of the Agency's loans, bonds or other indebtedness . . . . ***pursuant to the provisions of the Health and Safety Code***.

(Section VII.B., p. 13 [emphasis added].)

The City correctly notes the Agreement subordinated the County's right to passthrough payments as needed to pay ***all*** of the Agency's debt obligations. However, the Agreement clearly allocated funds between the County and Agency within the context of the overall statutory scheme governing redevelopment agencies. As the County

argues, the Agreement expressly contemplated the County would be entitled to any future change in this statutory scheme. The Agreement declares:

> It is hereby understood by and between the parties that under no circumstances shall the amount of money paid to the County by virtue of any provisions of this Agreement be less than the statutory pass through amount presently provided in Health and Safety Code section 33607.5 (AB 1290), ***or any other statutory amount provided by subsequent legislative enactments.***

(Section I.A.1, p. 2, "Premise of Agreement" [emphasis added].)

The question thus becomes what impact did the Dissolution Law have upon the Agreement?

2. Passthrough Payments Are Subordinate Only To Bond Debt

When the tax increment revenues of the former Agency are insufficient to pay the Agency's obligations, section 34183, subdivision (b), provides the deficiency shall be deducted from the County's passthrough payments. However, section 34183, subsection (b), clearly limits the deduction from the County's passthrough payment: ". . . funds for ***servicing bond debt*** may be deducted from the amounts for passthrough payments . . . ." (Emphasis added.)

The language of section 34183, subsection (b), is clear: Only funds necessary to service the Agency's ***bond debt*** may be deducted from the County's passthrough payments. When the language of the statute is clear, it controls. There is no need for statutory construction. (*Shields v. Poway United School Dist.* (1998) 63 Cal.App.4th 955, 962.)

The City argues the Dissolution Law gives ***first priority*** of repayment to existing Agency debt and sets forth rules directing the auditor-controller's distribution of the remaining balance. (City Supp. Brief at 4:28 to 5:2; see also 6:21-24.) The plain reading of section 34183, however, belies this interpretation. When distributing monies from the Trust Fund, the auditor-controller's administrative costs are paid first, passthrough payments next, and the Agency's enforceable obligations are paid third. (§ 34183(a).) Even when there are insufficient funds to pay the Agency's enforceable obligations, the auditor-controller's administrative costs remain the first to be paid, and passthrough payments second – unless the passthrough agreement was made subordinate to enforceable obligations.

3. Legislature's Declarations of Intent

The City stresses the Legislature's various declarations of its intent that under the Dissolution Law all obligations of former redevelopment agencies are to be paid. (See,

e.g., Assem. Bill No. 26 (2011-2012 1st Ex. Sess) ["AB X1 26"], § 1, subds. (i), (j); §§ 34167(a), 34172(d), 34175(a).)[18] The County counters with the Legislature's declared intent that the Dissolution Law shift property tax revenue from redevelopment agencies to other local entities, such as counties and schools. (See, e.g., AB X1 26, § 1, subd. (a)-(g); Assem. Floor Analysis, Assem. Bill No. X1 26 (2011-2012 1st Ex. Sess) as amended June 15, 2011, at 7-8.)

The Legislature's declaration of its intent may be a helpful tool in statutory construction – if a statute needs construing. (*People v. Goodliffe* (2009) 177 Cal. App. 4th 723, 729 [court may look to legislative intent to resolve ambiguity in statute].) However, when the statute is clear, there is no need to resort to construction. (*Shields, supra*, 63 Cal.App.4th at 962 ["It is a prima rule of construction that the legislative intent underlying a statute must be ascertained from its language; if the language is clear, there can be no room for interpretation, and effect must be given to its plain meaning."].)

Again, the language of section 34183, subsection (b), is clear. The County's passthrough payments are subordinated only as needed to service the Agency's bond debt. Compare the language of section 34183, subdivision (b), with section 34171, where the Legislature defined what constitute the Agency's "enforceable obligations." The Legislature clearly knew how to distinguish between different categories of debt held by former redevelopment agencies. When the Legislature subordinated the County's passthrough payments only as needed to service the redevelopment agencies' bond debt, it knew what it was doing. (See *People v. Snook* (1997) 16 Cal.4th 1210, 1217 [Legislature presumed to have "meant what it said"]; *Tracy v. Municipal Court* (1978) 22 Cal.3d 760, 764 [in absence of "compelling countervailing considerations, we must assume that the Legislature 'knew what it was saying and meant what it said.'"].)

4. There is no Impairment of Contract Rights

The City argues subordinating the County's passthrough payments only as needed to service the Agency's bond debt results in an impermissible impairment of contract rights in two distinct ways: (1) impairment of the City's contract with the County; and (2) impairment of the contract rights of the Agency's creditors. Neither argument persuades.

A. Third-Party Creditors

The argument that the Dissolution Law impairs contract rights of the Agency's creditors fails for two reasons. First, there is no allegation – much less showing – any creditor has suffered a loss. The specter of harm is just that. (See, e.g., *Amador Valley*

[18] The City asks the court to take judicial notice of a brief filed by the Department of Finance in *Syncora Guarantee Inc. v. State of California*, Sacramento County Superior Court case no. 34-2012-80001215, wherein the Department argues the Dissolution Law does not impair contract rights because it provides for payment of the redevelopment agencies' obligations. Because resolution of this matter does not require reference to this document, the request is denied. (*California Redevelopment Association v. Matosantos* (2013) 212 Cal.App.4th 1457, 1490 fn. 2.)

Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 239-41 ["In the absence of a factual record disclosing any present, specific and substantial impairment of contract…we must reject petitioners' impairment of contract challenge because it is premature."].) Second, the City lacks standing to assert the contract rights of the Agency's creditors. (See, e.g., *Id.* at 242 [stating it is "doubtful" governmental agencies have standing to challenge Proposition 13 on impairment of contract grounds, and suggesting such claims must be brought by agencies' obligees, bondholders, and creditors].)

The City cites *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296. *Sonoma County* is indeed instructive – for how this case differs. In *Sonoma County*, the Legislature purported to declare "null and void" Sonoma County's agreement to pay its employees a cost-of-living increase. There was a direct impairment of the employees' contract rights, which the employees filed suit to redress. Here, in contrast, there is no direct impairment of any contract between the Agency and its creditors.

B. Political Subdivisions

The Agency, County and City are political subdivisions of the state and "exist only at the state's sufferance." (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255-56.) The state has plenary power to set the conditions under which its political subdivisions are created and abolished. (*Id.*) The state has plenary power to grant its political subdivisions whatever rights it deems appropriate, including the right to enter into contracts. (*Id.*) Finally, the state has the power to narrow, expand, alter, or abolish those rights. (*City of Trenton v. State of New Jersey* (1923) 262 U.S. 182, 186 [State at its pleasure may modify or withdraw any powers it grants municipal corporation]; *La Mesa, Lemon Grove and Spring Valley Irritation Dist. v. Halley* (1925) 197 Cal. 50, 61 ["So far as a municipality is an agency of government, it has no rights or powers, as between it and the state, the legislature may not modify or abrogate at pleasure."].)

Subordinate political entities, as "creatures of the state," may not challenge the Dissolution Law as violating their rights under the contract clause of the California or United States Constitution.[19] (*Star-Kist Foods, Inc. v. County of Los* Angeles (1986) 42 Cal.3d 1, 7; *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209 [municipal corporation has no privileges or immunities under the United States Constitution it can invoke against the will of the state].)

As our Supreme Court explained nearly 100 years ago, the Constitution's prohibition against impairing the obligation of contracts "does not extend to the waiver or modification of any rights accruing to the agencies of the state in their governmental capacity by action of the people through constitutional amendments or by legislative enactment." (*County of Tulare v. City of Dinuba* (1922) 188 Cal. 664, 669; see also *City of Trenton, supra*, 262 U.S. at 186 ["The power of the State, unrestrained by the contract

[19] United States Constitution, article I, section 10; California Constitution article I, section 9.

clause…, over the rights and property of cities held and used for governmental purposes cannot be questioned."].)

CONCLUSION

The parties' Agreement subordinated the County's right to passthrough funds to payment of any of the Agency's debts, however, the Agreement was expressly subject to subsequent changes in the statutory scheme governing redevelopment agencies. The clear language of the Dissolution Law subordinates passthrough agreements only as needed to pay the former Agency's bond debt service. That clear language prevails.

The City's petition for writ of mandate and request for declaratory relief are denied to the extent they challenge the County's construction of the parties' Agreement.

The tentative ruling shall become the court's final ruling unless a party wishing 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.

If hearing is requested, any party desiring an official record of the proceeding shall make arrangements for reporting services with the clerk of the department 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 of proceedings lasting more than one hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.