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January 24, 2007

Mr. Allan Burdick
DMG-Maximus
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841*And Interested Parties and Affected State Agencies (See enclosed mailing list)***Re: Supplemental Staff Analysis for Reconsideration of Prior Decision and Hearing
Date***Binding Arbitration, 01-TC-07*

City of Palos Verdes Estates, Claimant

Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3

1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9

Dear Mr. Burdick:

The supplemental staff analysis for this Reconsideration of Prior Decision is complete and enclosed for your review.

HearingThe reconsideration and proposed Statement of Decision are set for hearing on **Thursday, January 25, 2007, at 9:30 a.m.** in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.**Special Accommodations**For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Deborah Borzelleri, Staff Counsel, at (916) 322-4230 with any questions regarding the above.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enc. Supplemental Staff Analysis



ITEM 5
SUPPLEMENTAL STAFF ANALYSIS
RECONSIDERATION OF PRIOR FINAL DECISION

Code of Civil Procedure Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9

As Added by Statutes 2000, Chapter 906 (S.B. 402)

Binding Arbitration

01-TC-07

EXECUTIVE SUMMARY

This is a supplement to the final staff analysis for the reconsideration of a prior final decision that was adopted on July 28, 2006, on the *Binding Arbitration* test claim. This analysis is necessary to take into consideration the attached cost information filed by the County of Napa on January 23, 2007, who at that time joined as a co-claimant on the test claim.

Background

The final staff analysis was issued on January 11, 2007, with a recommendation to deny the test claim. Although the staff analysis found that the test claim statutes did mandate certain activities for the period during which the statutes were presumed constitutional, and did constitute a "program" as well as a "new program or higher level of service," the statutes did not impose "costs mandated by the state" because there was no evidence in the record at the time to indicate the claimant incurred any costs to comply with the mandated activities during the reimbursement period, i.e., January 1, 2001 through April 20, 2003.

On January 23, 2007, the County of Napa joined as co-claimant on this test claim, pursuant to California Code of Regulations, title 2, section 1183, subdivision (h), and provided a declaration outlining costs incurred as a result of the test claim statutes. The County of Napa declared that, after the passage of the test claim statutes, and during the reimbursement period of January 1, 2001 through April 20, 2003, the County did engage in binding interest arbitration with the Napa County Deputy Sheriffs' Association to the final award of a decision by the arbitration panel. The County asserts that the costs to engage in this process exceeded \$10,000.

The final staff analysis addressed four issues:

1. Is the prior final decision on the *Binding Arbitration* test claim, adopted on July 28, 2006, contrary to law?
2. Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?
3. Do the test claim statutes constitute a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

4. Do the test claim statutes impose “costs mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Analysis

This supplemental analysis replaces the analysis of Issue 4 only; that is, whether the test claim statutes impose “costs mandated by the state.”

The final staff analysis found that the following activities were state-mandated, pursuant to article XIII B, section 6, for the reimbursement period of January 1, 2001 through April 20, 2003:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.4, subd. (b)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc. § 1282.2, subd. (a)(2)).
 - g. Make application and respond to deposition requests (Code Civ. Proc. §§ 1283, 1283.05).
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc. § 1283.05).

Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Government Code section 17564, subdivision (a), states that:

No claim shall be made pursuant to Sections 17551 and 17561, nor shall any payment be made on claims submitted pursuant to Sections 17551 and 17561, unless these claims exceed one thousand dollars (\$1,000) ...

In the final staff analysis, it was noted that the claimant, City of Palos Verdes Estates, stated on the record at the July 28, 2006, Commission hearing that it had not reached the stage in negotiations wherein binding arbitration under the test claim statutes was triggered, and thus no mandated costs could have been incurred. Staff therefore recommended denial of the test claim.

However, co-claimant County of Napa provided a declaration stating that the binding arbitration process was triggered, pursuant to Code of Civil Procedure sections 1299 et. seq., and County staff participated in the process during the reimbursement period by: 1) engaging in mediation; 2) designating an arbitration panel member; 3) meeting with the arbitrators; 4) gathering and

exchanging requested information, exhibits, and witness lists; 5) conducting discovery; and 6) participating in a three-day arbitration hearing.¹ Therefore, the County of Napa did engage in some of the state-mandated activities. The County further stated that its costs to participate in these activities exceeded \$10,000. Thus, there is now evidence in the record, signed under penalty of perjury, that there are increased costs mandated by the state pursuant to Government Code sections 17514 and 17564 of at least \$1,000.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Staff finds that none of the exceptions are applicable to deny this test claim.

Accordingly, staff finds that the activities mandated by the test claim statutes do impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Conclusion

Pursuant to the final staff analysis, staff finds that the prior Statement of Decision adopted on July 28, 2006, was contrary to law, and, in applying the appropriate law to the test claim, the test claim statutes mandate the following activities:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.4, subd. (b)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc. § 1282.2, subd. (a)(2)).
 - g. Make application and respond to deposition requests (Code Civ. Proc. §§ 1283, 1283.05).
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc. § 1283.05).

These activities constitute a "program" as well as a "new program or higher level of service," as addressed in the final staff analysis. Furthermore, the activities impose "costs mandated by the state" within the meaning article XIII B, section 6 of the California Constitution, and Government Code section 17514. Because the test claim statutes were declared unconstitutional

¹ Declaration of Jacqueline M. Gong, Deputy County Counsel, Office of County Counsel, County of Napa, page 3, attached.

on April 21, 2003, the reimbursement period is limited to January 1, 2001 through April 20, 2003.

Recommendation

Staff recommends the Commission partially approve this test claim and adopt the final staff analysis with regard to Issues 1, 2 and 3, and this supplemental analysis with regard to Issue 4.