

## ITEM 9

### CHIEF LEGAL COUNSEL'S REPORT New Filings, Recent Decisions, Litigation Calendar

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This public session report is intended only as an information item for the public.<sup>1</sup> Commission communications with legal counsel about pending litigation or potential litigation are reserved for Closed Executive Session, per the Notice and Agenda.

#### New Filings

None.

#### Recent Decisions

- California Supreme Court Denies State's Petition for Review on Mandate Issue; Matter Remanded to Sacramento County Superior Court for New Program or Higher Level of Service and Fee Authority Issues  
State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.  
California Supreme Court, Case No. S246706  
Third District Court of Appeal, Case No. C070357  
(Discharge of Stormwater Runoff, 07-TC-09; California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-001)
- California Supreme Court Grants CSBA's Petition for Review  
*CSBA v. State of California, et al.*  
California Supreme Court, Case No. S247266  
First District Court of Appeal, Case No. A148606  
(Mandates process for K-12 school districts, redetermination statutes, budget trailer bills [Education Code sections 42238.24 and 56523])  
  
Petition for review granted on the following issue: "(1) Does the state violate article XIII B, section 6, of the California Constitution when it identifies general education funding it already provides to school districts and county offices of education as "offsetting revenue" for the purpose of reimbursing state mandates? (2) Does the state violate separation of powers principles when it allows general education funding or special education funding to be identified as offsetting revenues for state-mandated programs?"
- Los Angeles Superior Court Upholds Commission's Decisions and Denies Petitions for Writ of Mandate  
*County of Los Angeles v. Commission on State Mandates, State Controller's Office*

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<sup>1</sup> Based on information available as of May 2, 2018. Release of this litigation report shall not be deemed to be a waiver of any privileged communication or act, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

Los Angeles County Superior Court, Consolidated Case Nos. BS166734, BS166735 (*Handicapped and Disabled Students I and II IRCs*, 13-4282-I-06, 12-0240-I-01)

On April 25, 2018, the court heard the matter and adopted its tentative ruling, finding that there was no evidence that the Commission was arbitrary or capricious in denying the County’s requests for reconsideration; that the Commission has authority under its completeness regulation to determine if an IRC is timely filed, even though the issue was not initially raised by the State Controller’s Office; and that the Commission correctly determined that the Final Audit Report, and not the subsequent letters issued by the Controller, triggered the statute of limitations for filing the IRCs.

- Los Angeles Superior Court Grants State’s Petition for Writ of Mandate and Denies Local Governments’ Request for Reconsideration

REMAND of *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates, County of Los Angeles, et al.*, Los Angeles County Superior Court, Case No. BS130730 (on Remand from California Supreme Court, Case No. S214855; *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21)

On February 9, 2018, the Los Angeles County Superior Court heard the remand of this matter, and granted the State’s petition for writ of mandate holding that the Test Claim NPDES Permit did not impose a new program or higher level of service and, thus, reimbursement is not required, as follows: “There is no doubt the permit (which only applies to local governments) ‘uniquely’ imposes the receptacle and inspection requirements on local governments. However, the relevant ‘state policy’ implemented by the permit is the federal and state law prohibition against unlawful discharges. That policy ‘applies generally to all residents and entities in the state.’”

On February 22, 2018, the county and cities filed a motion for reconsideration, which was heard on April 13, 2018. The court denied the request for reconsideration.

**Litigation Calendar**

<u>Cases</u>	<u>Date of Hearing</u>
<i>County of Los Angeles v. Commission on State Mandates, State Controller’s Office</i> Los Angeles County Superior Court, Case No. BS167447 ( <i>Seriously Emotionally Disturbed Pupils (SEDS) IRC</i> , 12-9705-I-04)	July 10, 2018 (Continued from April 25, 2018)
<i>Fresno Unified School District v. Commission on State Mandates, Department of Finance</i> Sacramento County Superior Court, Case No. 34-2017-80002768 ( <i>Certificated School Employees – Parental Leave</i> , CSM 16-TC-01)	August 17, 2018