

## **ITEM 12**

### **EXECUTIVE DIRECTOR'S REPORT**

#### **2020 Hearing Calendar, Workload Update, and Tentative Agenda Items for the November 2019 and January 2020 Meetings (info/action)**

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##### **I. 2020 HEARING CALENDAR (action)**

Commission meetings are generally held on the fourth Fridays of odd months, unless they conflict with a holiday. In 2020, the fourth Friday in November is a holiday, therefore the first Friday of December is proposed for this hearing. Additionally, the May hearing is proposed to remain on the Friday of the Memorial Day weekend, as is usual. Therefore, all 2020 regular meetings are proposed for the fourth Fridays of odd months, except for the November hearing, which is proposed for the first Friday of December.

In addition, tentative hearing dates are proposed for April 24, 2020 and October 23, 2020.

Staff recommends that the Commission adopt the proposed 2020 hearing calendar as follows:

#### **COMMISSION ON STATE MANDATES**

##### **2020 HEARING CALENDAR**

**(The Commission will conduct its hearings at 10:00 a.m. on Fridays in 2020)**

**Friday, January 24, 2020**

**Friday, March 27, 2020**

**Friday, April 24, 2020 (Tentative)**

**Friday, May 22, 2020**

**Friday, July 24, 2020**

**Friday, September 25, 2020**

**Friday, October 23, 2020 (Tentative)**

**Friday, December 4, 2020**

## II. WORKLOAD<sup>1</sup> (info)

### A. COMPLETED WORKLOAD SUMMARY

Type of Caseload	Completed in 2018/2019	Completed in 2019/2020
Test Claims	5	0
Parameters & Guidelines	2	0
Parameters & Guidelines Amendments	0	0
Requests for Reconsideration	0	0
Statewide Cost Estimates	1	1
Request to Review Claiming Instructions	0	0
Requests for Mandate Redetermination <sup>2</sup>	0	.5
Incorrect Reduction Claims	4	0
Appeal of Executive Director Decisions	0	0
Order to Set Aside Decision	0	1

### B. COMMISSION WORKLOAD REPORT

Type of Action	Pending on 7/1/2019	Filed Since 7/1/2019	Completed Since 7/1/2019	Pending on 9/1/2019
Test Claims	40	1	0	41 <sup>3</sup>
Parameters and Guidelines	3	0 <sup>4</sup>	0	3 <sup>5</sup>
Joint Reasonable Reimbursement Methodologies	0	0	0	0
Pending Requests To Jointly Develop Legislatively Determined Mandates	0	0	0	0
Requests for Reconsideration	0	0	0	0
Requests to Review Claiming Instructions	0	0	0	0

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<sup>1</sup> As of September 1, 2019.

<sup>2</sup> Requests for Mandate Redetermination require a two-hearing process.

<sup>3</sup> 39 of the 41 pending local agency claims are regarding National Pollutant Discharge Elimination System (NPDES) permits. One of these claims, 18-TC-02 was filed in 2018-19, but not deemed complete until August 20, 2019, and therefore does not yet appear on pending caseload. There are no school district test claims currently pending.

<sup>4</sup> Proposed parameters and guidelines may be filed by the test claimant or expedited and issued by Commission staff upon the adoption of an approved test claim or upon the expiration of a joint reasonable reimbursement methodology.

<sup>5</sup> One of these Parameters and Guidelines is on inactive status pending the outcome of litigation on the underlying Test Claim Decision.

<b>Type of Action</b>	<b>Pending on 7/1/2019</b>	<b>Filed Since 7/1/2019</b>	<b>Completed Since 7/1/2019</b>	<b>Pending on 9/1/2019</b>
Statewide Cost Estimates	3	0 <sup>6</sup>	1	2 <sup>7</sup>
Test Claim Reconsiderations or Reinstatements Based on Court Action	0	0	0	0
Parameters and Guidelines to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	1	0	0	1
Proposed Amendments to Parameters and Guidelines	1	1 <sup>8</sup>	0	2 <sup>9</sup>
Requests for Mandate Redetermination <sup>10</sup>	2	0	.5	1.5
Requests for Mandate Redetermination to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	1	0	0	1
Requests for Mandate Redetermination Reconsideration or Reinstatement Based on Court Action	1	0	0	1
Incorrect Reduction Claims	5	0	0	5
Incorrect Reduction Claims to be Reconsidered Based on Court Action	0	0	0	0
Appeals of Executive Director's Decisions	0	0	0	0

<sup>6</sup> Statewide cost estimates are not filed, but are issued by the Commission after claiming instructions have been issued and initial claims have been received by the State Controller's Office.

<sup>7</sup> One of these Statewide Cost Estimates is on inactive status pending the outcome of litigation on the underlying Test Claim Decision.

<sup>8</sup> Proposed parameters and guidelines amendments may be filed by an affected local or state agency for any of the reasons specified by section 1183.17 of the Commission's regulations or they may be issued by Commission staff upon the adoption of new test claim decision under the redetermination process.

<sup>9</sup> This Proposed Amendment to Parameters and Guidelines is on inactive status pending the outcome of litigation.

<sup>10</sup> Requests for Mandate Redetermination require a two-hearing process.

<b>Type of Action</b>	<b>Pending on 7/1/2019</b>	<b>Filed Since 7/1/2019</b>	<b>Completed Since 7/1/2019</b>	<b>Pending on 9/1/2019</b>
Regulatory Actions Pending	0	1	0	1
Applications for Findings of Significant Financial Distress	0	0	0	0

### **C. ADMINISTATIVE WORKLOAD (info)**

This section of the Executive Director's Report highlights major issues, challenges, and achievements with regard to the administrative workload of Commission staff.

#### **1. CONSOLIDATED ACTIVITY REPORT**

State Departments are required to award 25 percent of their annual contracting dollars to certified Small Businesses (SB) and 3 percent to certified Disabled Veteran Business Enterprises (DVBE). Public Contract Code section 10111 requires departments to report annually, the SB/DVBE participation on all of its state contracts, purchase orders, and Cal-Card purchases, to ensure that the participation goals are met. This report is known as the Consolidated Activity Report (CAR) or Form 810, which must be submitted to the Department of General Services (DGS) by August 1.<sup>11</sup>

Commission procurement staff met and exceeded its goals for SB/DVBE procurement in 2018-19 as follows:

We were required to have a minimum 3% DVBE participation; we achieved 24.39%.

We were required to have a minimum 25% SB/MB participation; we achieved 29.27%.

I would like to congratulate our procurement staff for their successful efforts in identifying competitive SB/DVBE vendors for over a quarter of the Commission's fiscal year 2018-2019 procurement.

Since this is the first year that the data was pulled directly from the purchase orders in FI\$Cal, the queried results for this report were incomplete. Despite several attempts and several staff hours to pull different report queries, the purchase orders had to be re-opened and revised so the data correctly and completely displayed in the queries. We expect the data queries to be accurate and complete in the future and are verifying that each newly-created PO contains the CAR information. Despite the challenges of working in Fi\$Cal, staff timely filed the Commission's report.

#### **2. ELECTRONIC RECORDS**

The size and complexity of the records filed with the Commission have increased exponentially in recent years. In particular, test claim filings, comments, and administrative records relating to matters involving the State Water Resources Control Board can range from 100,000 to 200,000 pages. The size of these records require between 10-20 cases of paper per single copy and cost approximately \$1,200 to copy in black and white or \$9,000 to copy in color, and increase staff

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<sup>11</sup> File Consolidated Annual Report for State Contracting, <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/File-a-Consolidated-Annual-Report> (accessed on August 27, 2019).

time and storage costs. In addition, these administrative records have included many color maps and diagrams, which vary in paper size and become illegible if printed on 8 x 11-inch paper in black and white. These colored exhibits are often located in the middle of thousands of pages of black and white text and can be very difficult to identify. To include these oversized and colored maps and diagrams in the correct size and color, they need to be folded and inserted manually into the printed paper copy. This process is extremely labor intensive, costly, and subject to human error. In addition, the electronic files are so large and often are not searchable (or not completely searchable) such that they are difficult or impossible to download on many devices, or to find relevant information in, making them inaccessible and of limited use to the parties and the public.

The proposed amendments to the Commission's regulations, which are contained in the currently pending rulemaking package, are consistent with court rules, which are moving in the direction of e-filing. Several of the Commission's Decisions (in particular those on the most complex and contentious claims with the largest records) are eventually litigated and the records for them must be filed with the courts. Code of Civil Procedure section 1010.6(c) authorizes courts to require filing electronically unless doing so would cause undue hardship or significant prejudice to a party; and California Rules of Court, Rule 2.253 authorizes trial courts to require electronically filed documents if the courts "have a process for parties or other persons, including represented parties or other represented persons, to apply for relief and a procedure for parties or other persons excused from filing documents electronically to file them by conventional means." It is anticipated that these proposed changes will streamline and make more efficient the mandate determination process and will enable staff to more easily review, analyze, post, serve, and store large, complex legal documents. These changes will also increase accessibility and ease of participation in the mandates process for parties, interested parties, and interested persons who will be able to more easily download and search supporting documents.

As discussed at earlier Commission meetings, staff is in the process of looking at changes to support an electronic-only record maintenance approach using a "Trusted System" to ensure permanent retention. This is the direction that the courts are moving in, though admittedly courts do not have a general duty to maintain *permanent* records of civil actions. The first step in implementing such a plan is to ensure that documents filed with the Commission are in the correct format for this purpose and this is being addressed in the proposed rulemaking package.

### **III. TENTATIVE AGENDA ITEMS (info)**

The tentative agenda items are subject to change based on, among other things, Commission workload, staffing, litigation, requests for extensions of time to file comments on draft proposed decisions, hearing postponements, informal conferences, and the complexity of the matters.

#### **November or January Meetings**

##### **A. TEST CLAIMS**

1. *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, 09-TC-03*  
County of Orange, Orange County Flood Control District, Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park

2. *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f, 10-TC-02, 10-TC-03, 10-TC-05*  
City of Dublin, County of Santa Clara, and City of San Jose
3. *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, 10-TC-11*  
County of Orange, Orange County Flood Control District, Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, and San Juan Capistrano, Claimants
4. *Racial and Identity Profiling, 18-TC-02*  
City of San Diego

**B. STATEWIDE COST ESTIMATES**

1. *U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01*  
City of Claremont, Claimant

**C. MANDATE REDETERMINATIONS**

1. *[Tentative] Academic Performance Index (01-TC-22), 18-MR-01*  
Second Hearing – New Test Claim Decision  
Department of Finance, Requester
2. *Sexually Violent Predators (CSM-4509), 12-MR-01-R*  
PURSUANT TO COURT’S JUDGMENT AND WRIT COUNTY OF SAN DIEGO  
V. COMMISSION ON STATE MANDATES (2018) 6 CAL.5TH 196; JUDGMENT  
AND WRIT OF MANDATE ISSUED BY SAN DIEGO COUNTY SUPERIOR  
COURT, CASE NO.: 37-2014-00005050-CU-WM-CTL  
Department of Finance, Requester

**D. PARAMETERS AND GUIDELINES AMENDMENTS**

1. *[Tentative] Academic Performance Index (01-TC-22), 18-MR-01*  
Department of Finance, Requester

**E. INCORRECT REDUCTION CLAIMS**

1. *Graduation Requirements, 16-4435-I-56*  
Grossmont Union High School District, Claimant
2. *Animal Adoption, 17-9811-I-04*  
Town of Apple Valley, Claimant