

## **ITEM 9**

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

#### **2019 Hearing Calendar, Workload Update, and Tentative Agenda Items for the November 2018 and January 2019 Meetings (info/action)**

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##### **I. 2019 HEARING CALENDAR (action)**

Commission meetings are generally held on the fourth Fridays of odd months, unless they conflict with a holiday. In 2019 there are no holiday conflicts for the Commission's regular hearing dates, though the May hearing is proposed for the Friday of the Memorial Day weekend, as is usual. Therefore, all 2019 regular meetings are proposed for the fourth Fridays of odd months.

In addition, some education claimants and Commission staff with school-aged children have proposed moving the June tentative meeting to a different month (April) to allow them to plan family vacations during the school summer vacation period. Though tentative hearing dates are rarely utilized, members, staff, and parties must plan as if those hearings will occur.

Staff recommends that the Commission adopt the proposed 2019 hearing calendar as follows:

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

##### **2019 HEARING CALENDAR**

**(The Commission will conduct its hearings at 10:00 a.m. on Fridays in 2019)**

**Friday, January 25, 2019**

**Friday, March 22, 2019**

**Friday, April 26, 2019 (Tentative)**

**Friday, May 24, 2019**

**Friday, July 26, 2019**

**Friday, September 27, 2019**

**Friday, October 25, 2019 (Tentative)**

**Friday, November 22, 2019**

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

### A. COMPLETED WORKLOAD SUMMARY

| Type of Caseload                        | Completed in<br>2017/2018 | Completed in<br>2018/2019 |
|---|---------------------------|---------------------------|
| Test Claims                             | 4                         | 0                         |
| Parameters & Guidelines                 | 1                         | 0                         |
| Parameters & Guidelines Amendments      | 0                         | 0                         |
| Requests for Reconsideration            | 0                         | 0                         |
| Statewide Cost Estimates                | 0                         | 0                         |
| Request to Review Claiming Instructions | 0                         | 0                         |
| Mandate Redetermination Requests        | 0                         | 0                         |
| Incorrect Reduction Claims              | 10                        | 2                         |
| Appeal of Executive Director Decisions  | 0                         | 0                         |

### B. COMMISSION WORKLOAD REPORT

| Type of Action  | Pending<br>on<br>7/1/2018 | Filed<br>Since<br>7/1/2018 | Completed<br>Since<br>7/1/2018 | Pending<br>on<br>9/1/2018 |
|---|---------------------------|----------------------------|--------------------------------|---------------------------|
| Test Claims   | 19 <sup>2</sup>           | 0                          | 0                              | 19 <sup>3</sup>           |
| Parameters and Guidelines   | 2                         | 0 <sup>4</sup>             | 0                              | 2 <sup>5</sup>            |
| Joint Reasonable<br>Reimbursement Methodologies                             | 0                         | 0                          | 0                              | 0                         |
| Pending Requests To Jointly<br>Develop Legislatively<br>Determined Mandates | 0                         | 0                          | 0                              | 0                         |
| Requests for Reconsideration  | 0                         | 0                          | 0                              | 0                         |
| Requests to Review Claiming<br>Instructions                                 | 0                         | 0                          | 0                              | 0                         |

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<sup>1</sup> As of September 1, 2018.

<sup>2</sup> This includes four claims that were filed in late 2016-2017 but not deemed complete until after July 1, 2017.

<sup>3</sup> 15 of the 19 pending local agency claims are regarding National Pollutant Discharge Elimination System (NPDES) permits.

<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<br/>on<br/>7/1/2018</b> | <b>Filed<br/>Since<br/>7/1/2018</b> | <b>Completed<br/>Since<br/>7/1/2018</b> | <b>Pending<br/>on<br/>9/1/2018</b> |
|--|------------------------------------|-------------------------------------|---|------------------------------------|
| Statewide Cost Estimates   | 3                                  | 0 <sup>6</sup>                      | 0                                       | 3 <sup>7</sup>                     |
| Test Claim Reconsiderations<br>or Reinstatements Based on<br>Court Action  | 0                                  | 0                                   | 0                                       | 0                                  |
| Parameters and Guidelines to<br>be Amended, Set Aside, or<br>Reinstated, as Directed by the<br>Legislature or Court Action | 0                                  | 0                                   | 0                                       | 0                                  |
| Proposed Amendments to<br>Parameters and Guidelines  | 1                                  | 0 <sup>8</sup>                      | 0                                       | 1 <sup>9</sup>                     |
| Requests for Mandate<br>Redetermination  | 1                                  | 0                                   | 0                                       | 1                                  |
| Incorrect Reduction Claims   | 8                                  | 1                                   | 2                                       | 7                                  |
| Incorrect Reduction Claims to<br>be Reconsidered Based on<br>Court Action  | 0                                  | 0                                   | 0                                       | 0                                  |
| Appeals of Executive<br>Director's Decisions   | 0                                  | 0                                   | 0                                       | 0                                  |
| Regulatory Actions Pending   | 0                                  | 0                                   | 0                                       | 0                                  |
| Applications for Findings of<br>Significant Financial Distress   | 0                                  | 0                                   | 0                                       | 0                                  |

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<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 expedited and 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.

### **C. ADMINISTRATIVE 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.

In addition to the processing and legal analysis of mandate related matters, Commission staff are responsible for all of the administrative duties of a state agency in addition to the specific duty of the Executive Director to "keep a full and true record of all proceeding of the Commission . . ." pursuant to Government Code 17530.

#### Maintenance of Program Records

Under the Commission's current record retention policy, which has been approved by California Records and Information Management Program (CalRIM), the Commission maintains a copy of all program records (that is records of Board of Control and Commission hearings and records of all matters filed with the Commission) both in hard copy (i.e. paper) and, for claims heard in 2010 and later, electronically. The electronic records are posted on the Commission's website and stored on the Commission's servers and in the cloud. Commission staff has also been working on a long-term project of scanning Board of Control and pre-2010 Commission paper records for electronic storage and placement on the Commission's website, as staff time allows.

#### Problem Statement

The size and complexity of the records being filed with the Commission has increased exponentially in recent years. In particular, test claim filings, comments, and administrative records relating to permits issued by the State Water Resources Control Board are in the tens of thousands of pages and the entirety of the records for each of these claims range from 100,000 to 200,000 pages and growing. Moreover, the sheer size of these records (which require between 10-20 *cases* of paper per single copy and cost approximately \$1200 to copy in black and white or \$9000 to copy in color – not to mention staff time and storage costs) is not the only challenge of maintaining these records in hard copy. Administrative records and exhibits filed by the parties include many color maps, diagrams, and the like which vary in paper size and become illegible if printed on 8x11 inch paper in black and white. Further, these exhibits are often located in the middle of thousands of pages of black and white text and can be very difficult to identify. To print these oversized and colored maps and diagrams in the correct size, and color, fold, and insert them into a paper copy must be done manually. This process is extremely labor intensive, costly, and subject to human error. Most of these records do not contain Bates numbering and therefore must be flipped though manually page by page by Commission staff to find where to insert the oversized and colored pages.

#### Solutions Being Considered

There are a few approaches to consider in handling these large and complex records:

1. Print the entire record in black and white and then manually go through the electronic version to identify pages that must be reprinted in color or in varying large sizes and then print and insert those color pages into the black and white copy. This option is the least costly in terms of copy costs and the most costly in terms of staff time.
2. Print the entire record in color on 8x11 inch paper and then manually go through to identify, print, fold, and insert the oversized pages. This is most expensive option in terms of copy

costs and would require funding in excess of what is currently budgeted, but would reduce days of staff time and minimize the risk of human error in assembling the record.

3. Move to all electronic record maintenance using a “Trusted System” to ensure permanent retention. This would require updating our record retention plan, getting approvals from CalRIM, and adopting or amending Commission policies and regulations to ensure the records are properly saved and retained. This option would require significant staff work on the front end, but would result in immense savings in printing and storage costs as well as staff time on the back end. 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. Commission staff is in the process of researching the best approaches to making changes to the Commission regulations and record retention policy to support an all-electronic filing and record maintenance approach.

### **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, Villa Park, Claimants
2. *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
3. *Central Basin Municipal Water District Governance Reform, 17-TC-02*  
Central Basin Municipal Water District, Claimant
4. *Lead Sampling in Schools, Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017, 17-TC-03*  
City of San Diego, Claimant

##### **B. MANDATE REDETERMINATIONS**

1. *High School Exit Examination (00-TC-06), 17-MR-01*  
Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x, Chapter 1 and Statutes 1999, Chapter 132; California Code of Regulations, Title 5, Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester  
First Hearing – Adequate Showing

**C. INCORRECT REDUCTION CLAIMS**

1. *Enrollment Fee Collection and Waivers*, 15-9913-I-02  
North Orange County Community College District, Claimant
2. *Graduation Requirements*, 16-4435-I-56  
Grossmont Union High School District, Claimant
3. *Interagency Child Abuse and Neglect Investigation Reports (ICAN)*, 17-0022-I-01  
City of Palmdale, Claimant
4. *Crime Statistics Reports for the Department of Justice (DOJ)*, 17-0240-I-01  
City of San Marcos, Claimant
5. *Animal Adoption*, 17-9811-I-04  
City of San Marcos, Claimant