



September 11, 2017

Mr. Michael Cohen, Director
Department of Finance
State Capitol
Sacramento, CA 95814

Re: Commission on State Mandates: Report to the Director of Finance on Workload Levels and Backlog Reduction Plan

Dear Mr. Cohen:

Enclosed is the Commission on State Mandates' *2017 Report to the Director of Finance on Workload Levels and Backlog Reduction Plan*. This report satisfies the statutory requirement to submit an annual *Report to the Director of the Department of Finance*, in accordance with Provision 2 of Item 8885-001-0001 of Statutes 2017, chapter 14 (AB 97).

Sincerely,

Heather Halsey
Executive Director

Edmund G. Brown Jr.
Governor



STATE *of* CALIFORNIA
**COMMISSION ON STATE
MANDATES**



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DIRECTOR OF FINANCE: 2017 REPORT ON WORKLOAD LEVELS AND BACKLOG REDUCTION PLAN

TABLE OF CONTENTS

Executive Summary1

2017 REPORT TO FINANCE AND BACKLOG REDUCTION PLAN5

I. Background5

A. Constitutional and Statutory Requirements for the Mandate Process..... 5

B. Historic Reasons for the Backlog..... 7

II. Commission Workload Considerations.....8

A. Workload Completed in 2016-2017 8

B. Position Authority 8

Table A. Commission Decision Making and Position Authority 2012-2013 to 2016-2017.....9

C. Pending Workload 9

Table B. Pending Workload as of June 30, 201710

 Test Claims 10

Table C. Pending Test Claims by Fiscal Year of Filing and Claimant Type.....10

 Parameters and Guidelines..... 11

Table D. Pending Parameters and Guidelines by Fiscal Year of Filing and Claimant Type.....11

 Statewide Cost Estimates 11

Table E. Pending Statewide Cost Estimates by Fiscal Year and Claimant Type12

 Incorrect Reduction Claims (IRCs) 12

Table F. Pending Incorrect Reduction Claims by Fiscal Year of Filing and Claimant Type.....12

Table G. Pending IRCs and Amount of Alleged Incorrect Reductions by Program.....13

 Parameters and Guidelines Amendments (PGAs) 14

Table H. Pending Parameters and Guidelines Amendments by Fiscal Year of Filing and Claimant Type ..14

III. Challenges to Reducing the Backlog.....14

A. Multiple Statutory Requirements..... 14

B. Litigation..... 15

C. Number and Complexity of Filings 17

 1. *Test Claims*..... 17

 2. *Reasonable Reimbursement Methodologies and Parameters and Guidelines* 17

 3. *Incorrect Reduction Claims* 18

D. Number and Level of Positions..... 19

E. Delays Caused by Litigation and Requests for Extensions or Postponements 19

F. Other Pending Work Contributes to the Test Claim Backlog..... 19

G.	Unique Issues Related to the IRC Backlog	19
H.	Number of Commission Meetings	20
IV.	Backlog Reduction Strategy	20
A.	Claim Consolidation	20
B.	Requests to Expedite.....	21
C.	Joint Reasonable Reimbursement Methodologies (Joint RRMs).....	21
V.	Plan of Action	21
	Support the Continued Informal Resolution of IRCs and Hear and Decide	
	All Currently Pending IRCs, Which Are Not Settled, by September 2018.....	22
VI.	Conclusion	23
A.	Test Claim to Statewide Cost Estimate Tracking as of July 1, 2017.....	24
Exhibits – Pending Workload		25
B.	Test Claims as of July 1, 2017	25
C.	Parameters and Guidelines as of July 1, 2017.....	30
D.	Statewide Cost Estimate as of July 1, 2017.....	31
E.	Incorrect Reduction Claims as of July 1, 2017.....	32
F.	Parameters and Guidelines Amendments as of July 1, 2017	36

Executive Summary

This report includes information on the Commission on State Mandates' (Commission's) workload levels and backlog reduction plan. The information herein is reported on a fiscal year basis.

A. Statutory Reporting Requirement

The 2017 Budget Act requires the Commission to report to the Director of Finance on workload levels and backlog. Specifically, it states:

The Commission on State Mandates shall, on or before September 15, 2017, and annually thereafter, submit to the Director of Finance a report identifying the workload levels and any backlog for the staff of the Commission.¹

This report satisfies that statutory reporting requirement.

B. Historic Reasons for the Backlog

The backlog exists for several reasons:

- 1984 – When the Commission was created, the Government Code allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations.
- 2002 – AB 3000 imposed a three-year statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and executive orders going back to 1975, resulting in 51 new test claims filed in 2002-2003, and 23 test claims filed in 2003-2004.
- From fiscal year 2002-2003 to 2008-2009 the Commission's position authority was reduced from 17 PYs to 10.5 PYs.²
- 2004 – AB 2856 imposed a new statute of limitations of one year from the effective date of a statute or executive order, or the date of first incurring costs.
- 2004-2006 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claims. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed the Commission to set several reconsideration decisions aside.
- *National Pollutant Discharge Elimination System (NPDES) Permit Claims.* Prior to 2010, Government Code section 17516(c) defined 'executive orders' to exclude any order, plan, or regulation issued by the State Water Resources Control Board or any regional water quality control board. Therefore, NPDES permits were not subject to mandate determination. Government Code section 17516(c) was ruled unconstitutional by the courts and local agencies have filed 19 NPDES permit test claims. The Commission decided five of these claims, but litigation on those decisions addressing the threshold issue of whether NPDES permits impose state or federal mandates, has been pending in the courts since June 2010 and the remaining 14 claims were placed on inactive status pending the California Supreme Court

¹ Statutes 2017, chapter 14 (AB 97), Item 8885-001-0001, Provision 2.

² Beginning fiscal year 2013-2014 the Commission's staff was increased by two PYs to 12.5.

decision, addressing a federal mandate issue, which was issued on August 29, 2016. There are 14 remaining NPDES test claims have now been tentatively set for hearing, thus creating a new backlog of test claims. These matters raise complex issues of law and fact and the records for each of them can reach up to 100,000 pages. As a result, they will take longer to complete than typical test claims filed on a statute or regulation.

C. Workload

As of July 1, 2017, the Commission has a pending caseload of 16 test claims,³ one parameters and guidelines,⁴ and one statewide cost estimate (SCE).⁵ These items have statutory deadlines for completion and are prioritized over other items.

Also currently pending are 14 incorrect reduction claims (IRCs), one parameters and guidelines amendment⁶ (PGA), and zero mandate redeterminations (MRs).⁷ Unlike test claims, parameters and guidelines, and SCEs, these matters do not have a statutory deadline for completion, but must be heard within a reasonable amount of time from the date of filing.⁸

For the 2016-2017 fiscal year, the Commission had 12.5 positions, with turnover in two positions and completed one test claim, 19 IRCs, three SCEs, two requests for reconsideration, and one appeal of executive director decision. The Commission also had nine cases pending in the courts, many of which required significant staff time to brief and argue. Many of the matters completed in 2016-2017 addressed complex issues regarding constitutional law, federal law and issues of procedure and many were issues of first impression. Additionally, Commission staff continued to focus its efforts on eliminating the IRC backlog, as it did last year.

D. Backlog Reduction Plan

There are currently 16 test claims pending. Of these, one was filed on December 21, 2016 and is set for hearing on September 22, 2017 and another was filed on June 30, 2017 and is tentatively set for hearing on March 23, 2018. The remaining 14 claims were filed on NPDES permits issued by the regional water quality control boards, and have been on inactive status pending the outcome of litigation in the California Supreme Court addressing a federal mandate issue. The Supreme Court issued its decision on August 29, 2016, and these claims are now active, tentatively set for hearing, and the test claim caseload is once again backlogged.

³ This includes 14 NPDES permit test claims.

⁴ This parameters and guidelines on is on inactive status, pending the outcome of litigation on the test claim upon which it is based which is currently pending in the Third District Court of Appeal.

⁵ This SCE has been on inactive status for several years pending the outcome of litigation on the test claim upon which it is based and that case has now been remanded to the superior court.

⁶ This PGA is on inactive status pending the outcome of litigation filed by CSBA which is currently in the Third District Court of Appeal.

⁷ Mandate Redeterminations require a two hearing process.

⁸ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

All parameters and guidelines, except one on inactive status pending court action on the underlying test claim, have been heard. The one remaining SCE is also on inactive status pending court action on its underlying test claim. SCEs are now tentatively set for hearing at the earliest possible date after a test claim is approved, the parameters and guidelines are adopted, and the Commission receives claims data from the State Controller. Therefore, the parameters and guidelines and SCE caseloads are no longer backlogged.

Additionally, there is one PGA pending and it is inactive pending court action in the CSBA case.⁹ Therefore, there is no PGA backlog.

With regard to MRs, there are zero pending. Therefore, there is no MR backlog.

Based on the above, the only backlogged matters remaining are the 16 test claims and the 14 currently pending IRCs.

Because there is a statutory duty to adopt an SCE within 12-18 months of the filing of a test claim, test claims, parameters and guidelines, and SCEs take priority over all other matters. The next priority for the Commission is resolution of PGAs and MRs, as these have a material effect on all eligible claimants for the program and for the state. IRCs have the lowest priority, since they affect only one local agency and have no statutory deadline by which they must be heard.

Hearing IRCs with cross-cutting issues first is one way that the Commission has been helping to spur informal resolution of these claims between the claimants and the State Controller's Office (Controller). Staff reviewed all of the IRCs filed through 2016-2017 and has determined that most are not suitable for consolidation, since they have unique facts or issues of law, and so must be analyzed individually. However, to the extent that there are cross-cutting issues, staff is analyzing and presenting them together for hearing, as much as is feasible, for purposes of efficiency and consistency.

Of the 14 pending IRCs, all but two were filed in the last three fiscal years and all of them are tentatively scheduled for hearing by September 2018. Based on the tentatively scheduled hearing dates for currently pending items, IRCs filed in 2017-2018 should be heard within two years of their filing date. This would represent a significant improvement in speediness over prior years. However, because IRCs have the lowest priority for hearing out of all Commission matters, their scheduling may be pushed to a later date if other items with higher priority, such as test claims, PGAs, and MRs, are filed or if there is a reduction in staff.

Whether elimination of the IRC backlog takes less time or more time than the staff expectation of approximately September 2018 will depend on a variety of factors discussed further in this report.

The temporary elimination of the test claim backlog in 2014-2015 enabled staff to redirect its efforts to the IRC backlog over the past two years, practically eliminating it, and has allowed new (non-NPDES) test claim filings to be immediately analyzed and set for hearing upon closure of the record.

⁹ *California School Board Association (CSBA) v. State of California et al.*, First District Court of Appeal, Case No. A148606, (Regarding 2010-2011 Budget Trailer Bills (Education Code sections 42238.24 and 56523), and the Redetermination Process.).

Beginning in the 2014-2015 fiscal year, Commission staff started tracking how long it takes to complete each test claim from the filing date to the adoption of the SCE. For test claims filed since July 1, 2013, excluding the NPDES permit claims, the Commission has been adopting decisions within an average of 8 months and SCEs within an average of 17 months from the time of the test claim filing. Pursuant to the Commission's regulations, extensions of time, postponements, continuances, and time for preparing joint reasonable reimbursement methodologies (joint RRM)s requested by the parties do not count against the statutory deadline.¹⁰ Additionally, test claims that are amended, severed, or consolidated restart the clock for the statutory deadline.¹¹ Therefore, to improve transparency with regard to how the mandates process is working, Commission staff has also begun tracking the time for delays requested by the parties and deducting that time from the time it takes to adopt an SCE once a test claim is filed.¹²

¹⁰ Title 2. California Code of Regulations, Section 1183.18.

¹¹ Title 2. California Code of Regulations, Section 1183.18.

¹² See Exhibit A.

2017 REPORT TO FINANCE AND BACKLOG REDUCTION PLAN

I. Background

A. Constitutional and Statutory Requirements for the Mandate Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. Because the Legislature found that the State Board of Control had failed to “adequately and consistently resolve complex legal questions involved in the determination of state-mandated costs” it created the Commission to succeed the Board of Control in making determinations on whether new statutes or executive orders are state-mandated programs within the meaning of article XIII B, section 6.¹³ Specifically, the Commission was established to “relieve unnecessary congestion of the judicial system . . .,” render sound quasi-judicial decisions, and provide an effective means of resolving disputes over the existence of state-mandated local programs.¹⁴

The Commission’s process provides the sole and exclusive procedure for local agencies and school districts (claimants) to seek reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution.¹⁵ The Commission is required to hear and decide claims filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.¹⁶

State law requires the Commission to adopt procedures to ensure that a statewide cost estimate (SCE) is adopted within 12 to 18 months after receipt of a test claim, when the Commission determines that a reimbursable mandate exists.¹⁷ Prior to adopting an SCE for a mandated program, the Commission must first hear and decide the test claim and the parameters and guidelines, which may include reasonable reimbursement methodologies (RRMs) pursuant to Government Code sections 17557 (RRMs in proposed parameters and guidelines) or 17557.1 (joint RRM). The parameters and guidelines is the document that specifies the activities that are reimbursable, including the scope of the activities and how reimbursement may be claimed. Without specific understanding of the nature and scope of the reimbursable activities, any cost estimate would be highly speculative. Based on the above, the test claim decision, parameters and guidelines, and SCE are required by statute to be adopted within 12 to 18 months of a test claim filing.

For RRM proposed for inclusion in the parameters and guidelines pursuant to Government Code sections 17557 and 17518.5, the Commission is required to make additional factual determinations, based on substantial evidence in the record, that the proposed formula or unit cost reasonably reimburses all eligible claimants’ actual costs mandated by the state. The proposed RRM must be based on cost information from a representative sample of eligible

¹³ Government Code section 17500.

¹⁴ *Id.*

¹⁵ Government Code section 17552.

¹⁶ Government Code section 17551.

¹⁷ Government Code section 17553.

claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the parameters and guidelines, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred.

The Commission is also required to hear and decide other claims that affect the workload of the Commission. These include: 1) incorrect reduction claims (IRCs) filed by local agencies and school districts alleging that the Controller has incorrectly reduced reimbursements; 2) proposed amendments to previously adopted parameters and guidelines (PGAs); 3) review of the Controller's claiming instructions; and 4) mandate redeterminations (MRs). There is no statutory timeframe for completing IRCs, PGAs, review of claiming instructions, or MRs. However, an administrative agency is required to hold a hearing within a reasonable time when the statutes governing the process do not fix a time limit to conduct the hearing.¹⁸ The ability of the Commission to hear and decide these matters within a reasonable timeframe is affected by the number of pending matters in the initial mandate determination process, as well as pending litigation and current staffing levels.

The adoption of an RRM in parameters and guidelines pursuant to Government Code sections 17557 or 17518.5 streamlines the claiming process and reduces or eliminates auditing issues on reimbursement claims filed with the Controller and was proposed by the Legislative Analyst's Office (LAO) for that reason. However, the process of adopting an RRM pursuant to Government Code 17557 increases the workload of the Commission when adopting or amending parameters and guidelines, by requiring the additional factual finding that the proposal reasonably reimburses all eligible claimants' actual costs mandated by the state as required by article XIII B, section 6 of the California Constitution. Analyzing such proposals requires significant staff time, in some instances more time than was required for the underlying test claim analysis. As of July 1, 2017, the Commission had adopted five, denied five, and dismissed four withdrawn RRM proposals submitted pursuant to 17557- most during fiscal years 2013-2014 through 2015-2016. However, AB 1608, a 2016-2017 budget trailer bill, amended Government Code section 17518.5 to require that RRMs "based in whole or in part on costs included in reimbursement claims submitted to the Controller, only used costs that have been audited by the Controller." There have been no RRMs proposed by the parties or considered by the Commission since this change in law has been adopted.

The joint RRM process, under Government Code sections 17557.1 and 17557.2, allows the claimant and the Department of Finance (Finance), with broad support from a wide range of local agencies or school districts, to jointly develop an RRM and statewide estimate of costs¹⁹ for adoption by the Commission. The parties are required to notify the Commission of their intent to proceed under the joint RRM process within 30 days of the adoption of the test claim decision. To date, only one joint RRM, and one extension of that joint RRM, has ever been approved.

¹⁸ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

¹⁹ Not to be confused with a statewide cost estimate (SCE).

B. Historic Reasons for the Backlog

The backlog exists for several reasons:

- 1984 – When the Commission was created, the Government Code allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations.
- 2002 – AB 3000 imposed a three-year statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and executive orders going back to 1975, resulting in 51 new test claims filed in 2002-2003, and 23 test claims filed in 2003-2004.
- From fiscal year 2002-2003 to 2008-2009 the Commission’s position authority was reduced from 17 PYs to 10.5 PYs.²⁰
- 2004 – AB 2856 imposed a new statute of limitations of one year from the effective date of a statute or executive order, or the date of first incurring costs.
- 2004-2006 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claims. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed the Commission to set several reconsideration decisions aside.
- *National Pollutant Discharge Elimination System (NPDES) Permit Claims.* Prior to 2010, Government Code section 17516(c) defined ‘executive orders’ to exclude any order, plan, or regulation issued by the State Water Resources Control Board or any regional water quality control board. Therefore, local governments were not authorized to file test claims on NPDES permits issued by the state or regional boards. Government Code section 17516(c) was ruled unconstitutional by the courts and, local agencies have filed 19²¹ NPDES permit test claims. The Commission decided five of these claims, but litigation on those decisions, addressing the threshold issue of whether NPDES permits impose a state or a federal mandate, has been pending in the courts since June 2010 and the remaining NPDES claims were placed on inactive status. On August 29, 2016, the California Supreme Court issued a decision upholding the Commission’s finding that the permit imposed state-mandated requirements and reversing the appellate decision: “We reverse, concluding that no federal law or regulation imposed the conditions nor did the federal regulatory system require the state to impose them. Instead, the permit conditions were imposed as a result of the state’s discretionary action.” The court remanded the matter to the lower courts to address whether the state-mandated requirements in the permit in question in that case impose a new program or higher level of service and whether there is fee authority sufficient to fully fund certain requirements of the permit, as was determined by the Commission. There is also a case pending in the Third District Court of Appeal that raises similar issues. The 14 remaining NPDES test claims have now been tentatively set for hearing, thus creating a new backlog of test claims. These matters raise complex issues of law and fact and the records for each of

²⁰ Beginning fiscal year 2013-2014 the Commission’s staff has increased by two PYs to 12.5.

²¹ Two of these were filed in 2013-2014, one in 2014-2015, and one in 2015-2016.

them can reach up to 100,000 pages. As a result, they will take longer to complete than typical test claims.

II. Commission Workload Considerations

A. Workload Completed in 2016-2017

In 2016-2017, the Commission completed one test claim, 19 IRCs, three SCEs, two requests for reconsideration, and one appeal of executive director decision. The Commission also had nine cases pending in the courts during 2016-2017, many of which required significant staff time to brief and argue. Many of the claims completed in 2016-2017 addressed complex issues regarding constitutional law, federal law, and issues of procedure and many of these issues were issues of first impression. Additionally, similarly to last year, there were more IRCs heard and decided than in prior years.

B. Position Authority

Like many state agencies, during the long-term budget crisis of 2001-2002 through 2012-2013, Commission staffing levels decreased significantly. This was a significant contributor to the Commission's backlog. In the 2001-2002 to 2003-2004 budget years, Commission staff was drastically reduced from a high of 17 positions to a low of 9.7 positions, as a result of the energy crisis and budget crisis that followed. Around the same time, in 2002, AB 3000 imposed a statute of limitation for filing a test claim and included a grandfather clause, allowing the filing of test claims on statutes, regulations and executive orders dating back to 1975 until September 30, 2003. Thus, a great number of large and complex test claims were filed without sufficient staff to analyze them resulting in a significant backlog of claims. In 2006, the Legislature provided the Commission with three limited-term positions to eliminate the backlog. Since those positions were very difficult to fill, they were made permanent in 2007. However, as a result of budget cuts in 2008 and 2009, two positions were eliminated. Finally, for most of the time from 2008-2009 to 2012-2013, Commission staff, like most state employees, were subject to furlough and personal leave programs, which effectively reduced personnel hours by an additional five to fifteen percent throughout those years.

According to the Bureau of State Audits (BSA): "despite the State's budget issues, cutting staff who determine state mandates has been shortsighted. Specifically, such actions over the last few years have contributed to delays related to stalled test claims that allow the buildup of millions of dollars of potential claims that the State is constitutionally required to reimburse."²²

Based on these facts, the Commission submitted a budget change proposal for 2013-2014, which was approved and established two new positions: an attorney III and a senior legal analyst. As of July 1, 2014, the Commission has 12.5 positions: one executive director (exempt), one chief legal counsel (CEA B), one assistant executive director (SSM II), three attorney IIIs, one attorney I, one senior information systems analyst, one senior legal analyst, two and a half associate governmental program analysts, and one office technician. Table A. shows completed workload and position authority for the past 5 fiscal years.

Table A. includes matters heard by the Commission as well as matters withdrawn or dismissed prior to a hearing since significant staff resources are also committed to matters that are

²² California State Auditor Report 2009-501, page 22.

withdrawn or dismissed as this usually occurs after the draft proposed decision, and often after the proposed decision, have been issued by Commission staff. This table does not reflect work completed for litigation, which has seen a recent uptick; regulations; or special projects.

Table A. Commission Decision Making and Position Authority 2012-2013 to 2016-2017²³

Matters Completed	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Test Claims	11	13	5	3	1
Parameters and Guidelines	12	8	3	2	0
Statewide Cost Estimates	8	12	9	2	3
Parameters and Guidelines Amendments	3	10 ²⁴	6	5	0
Requests for Reconsideration	.5 ²⁵	.5	0	0	1
Requests to Review Claiming Instructions	0	0	0	0	0
Incorrect Reduction Claims	42 ²⁶	22 ²⁷	30 ²⁸	27 ²⁹	19 ³⁰
Mandate Redeterminations	0	2	3.5	3.5	0
Positions	10.5	12.5	12.5	12.5	12.5

C. Pending Workload

The Commission's current caseload consists of: test claims, parameters and guidelines, PGAs, SCEs, and IRCs. Workload also consists of regulatory actions, litigation, and inquiries from the

²³ This table does not reflect work completed for litigation, regulations, and special projects.

²⁴ Six decided, four dismissed.

²⁵ Requests for reconsideration require two hearings.

²⁶ Zero decided, 42 withdrawn.

²⁷ Four decided, 18 withdrawn.

²⁸ 18 decided, 10 withdrawn, and two dismissed for failure to prosecute.

²⁹ 22 decided, four withdrawn, and one dismissed for abandonment of claim.

³⁰ 12 decided, seven withdrawn.

Legislature and state agencies.

Table B. Pending Workload as of June 30, 2017

Type of Action	Number Pending
Test Claims ³¹	16
Incorrect Reduction Claims ³²	14
Proposed Parameters and Guidelines ³³	1
Proposed Parameters and Guidelines Amendments ³⁴	1
Statewide Cost Estimates ³⁵	1
Litigation Matters Pending	9
Regulatory Actions	1
Responding to inquiries from the Legislature, LAO, BSA, and other state agencies	Ongoing ³⁶

Test Claims

There are 16 test claims pending and the Commission’s test claim caseload is once again backlogged due to the reactivation of the NPDES permit test claims. Since 2013, all non-NPDES test claims filed with the Commission have been analyzed as soon as the comment and rebuttal periods are complete and the record is closed and are set for hearing as soon as possible thereafter. Table C. shows the pending test claim filings by fiscal year and claimant type.

Table C. Pending Test Claims by Fiscal Year of Filing and Claimant Type

Filing Date by Fiscal Year	School District (K-14)	Local Agency	Total
2009-2010	0	1	1
2010-2011	0	7	7
2011-2012	0	2	2

³¹ 14 were filed by local agencies and one was filed by a school district. See Exhibit B.

³² See Exhibit E.

³³ See Exhibit C.

³⁴ See Exhibit F.

³⁵ See Exhibit D.

³⁶ The Commission regularly responds to inquiries from the Legislature, LAO, and other state agencies regarding mandates. Since the Commission obtained additional staff, it is now fully in compliance with BSA’s recommendations.

2012-2013	0	0	0
2013-2014	0	2	2
2014-2015	0	1	1
2015-2016	0	1	1
2016-2017	2	0	2
Totals	2	14	16

Parameters and Guidelines

Currently, there is one parameters and guidelines which is inactive pending court action on the underlying test claim. As noted above, parameters and guidelines are a high priority for the Commission since an SCE cannot be adopted until after claims have been filed following adoption of the parameters and guidelines and issuance of the Controller’s claiming instructions. Generally, the most common reasons for delay of these items include litigation on the test claim decision, disputes regarding the activities claimed to be reasonably necessary to comply with the mandate, pending agreements between the parties on a RRM, or pending requests by one of the parties to include an RRM in the parameters and guidelines. Table D shows the pending parameters and guidelines. Commission staff, following the backlog reduction plan, have been expediting parameters and guidelines immediately upon an approved or partially approved test claim. Therefore, parameters and guidelines can be heard as soon as the next Commission hearing thus preventing a backlog in parameters and guidelines.

Table D. Pending Parameters and Guidelines by Fiscal Year of Filing and Claimant Type

Year Test Claim Decision Adopted	School District (K-14)	Local Agency	Total
2009-2010	0	1	1 ³⁷
Totals	0	1	1

Statewide Cost Estimates

Existing law requires the Commission to adopt a SCE within 12 to 18 months of a test claim filing, when the Commission determines that a state mandate exists. Generally, the Commission’s practice is to use actual reimbursement claims filed by the claimants to develop the SCE, because prior attempts to prepare SCEs using other data provided no useful information. Though not perfect, using actual reimbursement claims data does provide useful information which brings the estimate much closer to the actual costs than in past SCEs which did not rely on actual claims. Moreover, staff is able to include assumptions in the SCEs, based upon issues that are addressed in the test claim or parameters and guidelines decisions, or that arise in the claiming process which can help provide a context for the numbers and may be useful in the decision making process. The SCO develops claiming instructions within 90 days after the adoption of parameters and guidelines. Claimants have 120 days from the release of the

³⁷ Pending Action of the Third District Court of Appeal - Discharge of Stormwater Runoff, 07-TC-09.

claiming instructions to file claims for the initial period of reimbursement. However, if reimbursement is based on a uniform cost, it may be possible to prepare the SCE before reimbursement claims have been filed, since costs can be more accurately predicted using the formula. Commission staff typically sets SCEs for the first hearing after the claims data is received from the Controller which is typically 7 to 9 months after the adoption of parameters and guidelines. Commission staff has also begun preparing SCEs when a mandate has been redetermined or if a PGA has been adopted that may change the state’s liability due to a clarification of the mandated program or a change in reimbursement method. Table E. shows the current SCE caseload pending before the Commission.

Table E. Pending Statewide Cost Estimates by Fiscal Year and Claimant Type

Fiscal Year Parameters and Guidelines Adopted	School District (K-14)	Local Agency	Total
2010-2011	0	1 ³⁸	1
Totals	0	1	1

Incorrect Reduction Claims (IRCs)

The IRC caseload is backlogged, though the backlog is shrinking quickly. As of July 1, 2017, there are 14 IRCs pending that allege a total of \$34,870,402 in incorrect reductions to mandate reimbursement claims. Table F. shows the pending IRC caseload by fiscal year that the claim was filed and claimant type.

Table F. Pending Incorrect Reduction Claims by Fiscal Year of Filing and Claimant Type

Fiscal Year of Filing	School District Claims (K-14)	Local Agency Claims	Total IRCs by Fiscal Year³⁹
2010-2011	1	0	1
2013-2014	1	0	1
2014-2015	9	0	9
2015-2016	2	0	2
2016-2017	1	0	1
Totals	14	0	14

IRCs are filed with the Commission based on reductions of reimbursement claims taken by the Controller. Unlike test claims, where one claimant represents all potential claimants statewide, individual claimants file IRCs with the Commission on individual reimbursement claims filed by

³⁸ Inactive pending final disposition of *Department of Finance v. Commission on State Mandates* on remand to the superior court – *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21.

³⁹ As of July 1, 2017.

the individual claimant.⁴⁰ Though the Commission may combine IRCs on the same program and similar issues for purposes of analysis, oftentimes IRCs do not lend themselves to consolidation because issues unique to each claim must be addressed.

The process for resolving IRCs can be complex, and differs with each claim. For some claims, once the claimant files an IRC, an informal conference may be conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC is settled. When the issues cannot be resolved, Commission attorneys prepare a detailed analysis of the legal and factual issues, the Commission approves, partially approves, or denies the IRC, and adopts a decision. Whether or not the issues are resolved at an informal conference, staff must spend time to prepare and review the record (including the records for the test claim and parameters and guidelines decisions, and the claiming instructions), review detailed reimbursement claims, and determine the legal and audit issues. This process can be lengthy. There are currently five state-mandated programs with pending IRCs. Table G. shows the number of IRCs listed by program, claimant type, and total reduction amount per program.

Table G. Pending IRCs and Amount of Alleged Incorrect Reductions by Program

Program	Number of IRCs	Reduction Amount
	Local Agency Claims	
<i>Subtotal</i>	0	\$0
	School District Claims	
<i>Graduation Requirements</i>	1	\$15,585,832
<i>The Stull Act</i>	1	\$274,101
<i>Subtotal</i>	2	\$15,859,933
	Community College District Claims	
<i>Enrollment Fee Collection and Waivers</i>	1	\$15,955,585
<i>Health Fee Elimination</i>	1	\$902,744
<i>Integrated Waste Management</i>	10	\$2,152,140
<i>Subtotal</i>	12	\$19,010,469
TOTAL	14	\$34,870,402

⁴⁰ California has 58 counties so county claims are limited to 58 potential IRCs per program, per year. However, mandates involving cities, school districts, and special districts create thousands of potential IRCs per program, per year.

Parameters and Guidelines Amendments (PGAs)

Currently, there is one PGA pending. As with IRCs, there is no statutory deadline for completing PGAs, but PGAs are generally prioritized over IRCs because, like test claims, they affect all eligible claimants as well as the state.

**Table H. Pending Parameters and Guidelines Amendments
by Fiscal Year of Filing and Claimant Type**

Fiscal Year Filed	K-14	Local Agency	State Controller	Department of Finance	Totals
2011-2012	0	0	0	1 ⁴¹	1
Totals	0	0	0	1	1

III. Challenges to Reducing the Backlog

As of July 1, 2017, the Commission has 16 test claims and 14 IRCs pending.⁴² Additionally, the current caseload of the Commission includes SCEs, parameters and guidelines, and, PGAs which are included in the plan to provide a fuller understanding of the Commission's caseload and priorities. The Commission faces a wide range of challenges and factors that may delay completion of the caseload, as discussed below.

A. Multiple Statutory Requirements

The Commission is charged by law with multiple responsibilities in addition to hearing test claims and IRCs. Government Code section 17500 et seq. also requires the Commission to adopt parameters and guidelines, hear requests to amend parameters and guidelines, prepare SCEs, hear requests to review the Controller's claiming instructions, hear mandate redetermination requests, and review county applications for a finding of severe financial distress. Each matter must proceed in accordance with the due process procedures outlined in the Government Code and the Commission's regulations, which allow for party and interested party participation.

While the Commission has not received a county application for a finding of significant financial distress since 2005, state law is clear that when these applications are filed, the county is entitled to a final decision by the Commission within 90 days. If the Commission receives an application, substantial staff resources will be shifted to conduct the required investigation, hearing, and determination.

Parties are authorized to request an extension of time for filing comments and postponement of items set for hearing. Under specified conditions, when good cause is shown, the executive director is required by statute to grant the request. The Commission frequently receives requests for extensions and postponements that result in items on the agenda being postponed.

The Commission also periodically amends its regulations. In 2011, Commission staff prepared two regulatory packages. In 2013-2014, staff prepared a major clean up and streamlining

⁴¹ On inactive status, pending the outcome of litigation in *CSBA v. Department of Finance* pending in the Third District Court of Appeal.

⁴² These numbers include new filings received in the 2016-2017 fiscal year.

regulation package to clarify the mandates process. In 2014-2015, 2015-2016, and again in 2016-2017, staff prepared a general clean up package.

B. Litigation

The Commission was involved in nine significant litigation matters in 2016-2017. The following new cases were filed in Los Angeles County Superior Court in 2016-2017, challenging recent decisions of the Commission on IRCs:

- *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
- *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
- *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]

In addition, four matters have been appealed to the Courts of Appeal and the California Supreme Court, which have required the commitment of substantial staff time:

- *Coast Community College District, et al. v. Commission on State Mandates*,
Third District Court of Appeal, Case No. C080349
Sacramento County Superior Court, Case No. 34-2014-80001842
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807,

55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

- *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
Sacramento County Superior Court, Case No. 34-2015-80002016
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]
- *California School Board Association (CSBA) v. State of California et al.*
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]
- *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]

Commission staff is also involved in two litigation matters that address NPDES permits issued by the Regional Water Quality Control Boards under the federal Clean Water Act and State Porter-Cologne Act with complaints and cross-complaints filed by the State and the local agency claimants. These cases present many issues of first impression relating to whether a state-mandated program exists and whether local agencies have fee authority sufficient to cover the costs of the services provided. While Commission staff is not briefing these matters, staff has filed responses and is actively monitoring the cases and answering questions from the court and the parties.⁴³

⁴³ The California Supreme Court, in *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 and County of Los Angeles, et al.* 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), issued its decision on August 29, 2016, addressing the federal mandate issue, but remanded to the lower courts the

C. Number and Complexity of Filings

As previously noted, the most labor-intensive activity for Commission staff is preparing proposed decisions for test claims, parameters and guidelines, MRs, and IRCs.

1. Test Claims

The 14 pending NPDES permit claims and the litigation on the five test claims already decided under this program currently pending in the Third District Court of Appeal or remanded to the Los Angeles Superior Court by the California Supreme Court make up a significant portion of the current workload. The factual determinations for these pending claims will require the analysis of substantial evidence in the record in accordance with Government Code section 17559. Commission staff expects that analysis of the currently pending 14 NPDES claims will take approximately sixteen months from the date of this report, with nearly all Commission staff time dedicated to completion of these items only.

Finally, test claims are often thought to be filed on one individual statute or code section. This is not correct. Test claims can be filed on numerous statutes (each containing numerous code sections), regulations, and executive orders. For example, the 51 test claims filed in 2002 alleged that nearly 500 statutes, and 400 regulatory sections and executive orders were mandated programs. By law, each statute, code section, regulation, and executive order pled requires a finding by the Commission. Moreover, even when a test claim is only on one statute, that statute may raise complex issues of law or an issue of first impression and so may require substantial staff time despite its apparently small size. As a result, the time it may take to hear and decide any particular test claim is highly variable and is difficult to predict with widget-like accuracy.

2. Reasonable Reimbursement Methodologies and Parameters and Guidelines

A request to include a reasonable reimbursement methodology (RRM) in parameters and guidelines is a request made by a local entity claimant, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5. Under article XIII B, section 6 of the California Constitution and 17550 et seq. of the Government Code, the Commission is required to make the factual determination, based on substantial evidence in the record, of whether the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. The proposed RRM must be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the

remaining issues of whether the permit requirements impose a new program or higher level of service, and whether there are costs mandated by the state or fee authority sufficient to pay for the new requirements. (Los Angeles County Superior Court, Case No. BS130730.) The Los Angeles County Superior Court has scheduled a hearing date on January 31, 2018.

The other NPDES matter is pending in the Third District Court of Appeal (*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.*, Third District Court of Appeal Case No. C070357, (*Discharge of Stormwater Runoff, Order No. R9-2007-000, 07-TC-09*)).

mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the parameters and guidelines, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred.

The adoption of an RRM pursuant to Government Code sections 17557 or 17518.1 streamlines the claiming process and reduces or eliminates auditing issues on reimbursement claims filed with the Controller and was proposed by the LAO for that reason. However, the process increases the responsibility of the Commission when adopting parameters and guidelines, by requiring the additional factual finding that the proposal reasonably represents the mandated costs incurred by all eligible claimants in the state pursuant to article XIII B, section 6 of the California Constitution. Analyzing such proposals requires significant staff time, in some instances longer than the time required for a test claim analysis. There are currently no proposed RRMs in parameters and guidelines or PGAs pending before the Commission.

3. Incorrect Reduction Claims

Unlike test claims, where one claimant represents all potential claimants statewide in a manner analogous to a class action lawsuit, individual claimants file IRCs with the Commission and seek redress for reductions that apply only to that one claimant.⁴⁴ The process for resolving IRCs can be complex and differs with each claim. Most IRCs involve issues of law and fact. Thus, analysis of each IRC requires legal and fiscal consideration, as well as a technical review of the Controller's audit. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC may be settled.

When the issues cannot be resolved, Commission attorneys prepare a detailed analysis of the legal and audit issues in the proposed decision. The Commission approves, partially approves, or denies the IRC, and adopts a decision. Whether or not the issues are resolved at the informal conference, Commission staff must spend time to prepare and review the record (including the original test claim record, parameters and guidelines, and claiming instructions), review detailed reimbursement claims, and determine the legal and fiscal issues. This process can be lengthy.

Under the Commission's regulations, a claimant has three years from the notice of a reduction to file an IRC. As stated above, there are 14 IRCs pending as of July 1, 2017. However, since the beginning of the 2014-2015 fiscal year, the Controller has issued approximately 208 audit reports on 29 mandated programs.⁴⁵ The FY 16-17 audits were on the following programs for local agencies: Animal Adoption (1), Consolidated Handicapped and Disabled Students (HDS), HDS II, and Seriously Emotionally Disturbed Pupils (4), Crime Statistics Reports for the Department of Justice (3), Domestic Violence Background Checks (1), Municipal Stormwater and Urban Runoff Discharges (15), Open Meetings Act/Brown Act Reform (5), and Peace Officers Procedural Bill of Rights (1). For K-12 schools audits were completed on: Habitual Truant (1), High School Exit Examination (9), The Stull Act (7); and for community college districts, Enrollment Fee Collection and Waivers (2), and Minimum Conditions for State Aid (1).

⁴⁴ California has 58 counties, so county claims are limited to 58 potential IRCs per program, per year. Mandates involving cities or school districts, however, create the potential for over 1,600 IRCs per program, per year.

⁴⁵ The statute of limitations to file an IRC is three years (2 CCR 1185.1).

Commission staff has been informed by claimant representatives that, in response to recent Controller audits, numerous IRCs will likely be filed in the near future.

D. Number and Level of Positions

As discussed above, the Commission's position authority was reduced nearly half between 2002 and 2009 and the reductions were compounded by the furlough and personal leave programs that followed. The continual decrease in staff and staff hours is one of the primary factors that caused or exacerbated the backlog. The number of matters completed is based on the number of positions and staff hours and on the classification and level of those positions. However, with the two new positions beginning and the personal leave program ending in July 2013, the Commission has been better able to expeditiously resolve the backlogged matters and newly filed matters. A reduction in staff would likely result in a permanent reduction in productivity. Additionally, staff turnover, as the Commission experienced in the last two fiscal years, results in a temporary reduction in productivity.

E. Delays Caused by Litigation and Requests for Extensions or Postponements

Commission decisions on test claims are sometimes delayed because of request for extensions and postponements or because they are litigated. When that occurs, Commission proceedings on parameters and guidelines and SCEs are delayed, sometimes for several years. An extreme example of this was in *Behavioral Intervention Plans (BIPs)*, CSM 4464, where there were 27 extension requests granted while the parameters and guidelines were pending, followed by seven years of litigation resulting in a nearly 13-year delay in the adoption of parameters and guidelines. Though this matter was an outlier, other claims are also sometimes significantly delayed because of extensions, postponements, and litigation.

Hearing postponements, by definition, delay the completion of pending matters. Currently, there is no limit to the number of extensions and postponements that may be requested by the parties. For some claims, more than 10 requests for 60 day extensions and postponements have been requested and granted. For every six requests granted, a year or more is added to the time to complete the claim. Under specified conditions, when good cause is shown, the executive director is required by statute and regulation to grant the request. The Commission frequently receives requests for extensions and postponements that result in items on the proposed agenda being postponed. The handling of these requests and revision and reissuance of the agenda also takes staff time away from the processing of other pending matters.

Additionally, handling litigation on one matter draws staff time away from other pending matters.

F. Other Pending Work Contributes to the Test Claim Backlog

Litigation, parameters and guidelines, and PGAs that include complex RRM requests pursuant to 17557, IRCs, and requests to reconsider prior decisions, have all contributed to the delay in eliminating the test claim backlog in the past.

G. Unique Issues Related to the IRC Backlog

The filing of an IRC is an appeal of the Controller's reduction of a reimbursement claim. The same factors that contributed to the test claim backlog also contribute to the IRC backlog, including the number and complexity of the filings, number, classification, and level of positions, and other pending matters. Additionally, unlike for test claims, parameters and

guidelines, and SCEs, there is no statutory deadline for completing IRCs. Therefore, IRCs have lower priority when setting matters for hearing, though the Commission makes every effort to hear all matters filed within a reasonable time.

H. Number of Commission Meetings

The Commission is required by statute to conduct at least six public meetings per year, and tentatively schedules two additional meetings each year. Preparation for each Commission meeting consumes a significant amount of staff time, regardless of the number of items set for hearing. Though it may seem counterintuitive, the more meetings the Commission holds, the fewer items it can complete for hearing. This is attributable to timing of the release of drafts for public comment, the requirement to provide service and public notice on all matters, and the time required to prepare hearing materials for Commission members and the public.

IV. Backlog Reduction Strategy

The Commission has had a long-standing practice of prioritizing test claims, parameters and guidelines, and SCEs because of the statutory deadline attached to those matters and otherwise generally hears matters in the order filed with the Commission. This first-in-time approach is a core policy that has served the Commission well. Over the years, however, the Commission has made exceptions to this policy in certain circumstances. For example, when a court has ruled on a matter before the Commission, the Commission has consistently responded by moving that matter ahead in the queue, whether or not the courts have ordered the Commission to do so.

Commission staff has taken matters out of order for staff development purposes and has also, on occasion, assigned less-complicated matters out of order to a staff person who has just completed a particularly difficult assignment. This increases the opportunities for staff to gain experience in a wide variety of legal matters and prevents staff burnout.

The Commission remains committed to continuing to eliminate the backlog by adhering to the first-in-time policy, unless circumstances justify an exception. The following are strategies the Commission is employing to more efficiently decide matters, with a goal of eliminating the backlog as soon as possible: (1) claim consolidation; (2) common issues; (3) simple test claims and single-issue IRCs; (4) stakeholder requests; and (5) joint RRM.

A. Claim Consolidation

Pursuant to California Code of Regulations, title 2, section 1183.5, the executive director may, subject to appeal, “consolidate part or all of any test claim with another test claim or sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.” Similarly, Government Code section 17558.8 and section 1185.3 of the Commission’s regulations allow the executive director to consolidate IRCs. To date, the Commission has consolidated numerous test claims. However, consolidation has been used sparingly for IRCs because it only works if the issues of law and fact are the same, the claimants filed their reimbursement claims in the same manner and for the same costs, and the Controller auditors were consistent in making claim reductions based on similar documentation. Commission staff has reviewed all currently pending IRCs and has determined that almost none of them are suitable for consolidation and will require individual analyses. For future IRCs though, it may be appropriate to consolidate claims filed by different claimants so that one decision may be adopted by the Commission to resolve multiple claims.

In addition, if the Commission decides an issue in one matter that is contested in other matters, the time required to complete those other matters may be reduced. The shorthand for this concept is “cross cutting issues.” For example, in 2010, the Commission adopted decisions on the County of Los Angeles and the City of Tustin *Investment Reports* IRCs. In doing so, the Commission resolved certain crosscutting issues common to nearly all of these IRCs. At that time, there were 72 pending IRCs on this program. Since that time, Commission staff has worked to ensure that the remaining *Investment Reports* IRCs were resolved informally through negotiations between claimants and Controller staff. In fiscal year 2012-2013, thirty-eight *Investment Reports* IRCs were settled and withdrawn and in fiscal year 2013-2014, eleven were settled and withdrawn, in 2015-2016, all but one of the remaining IRCs on this program were either settled and withdrawn or dismissed for lack of prosecution. As of July 1, 2016, there are no remaining IRCs pending on this program.

B. Requests to Expedite

Commission staff occasionally receives requests from a party to expedite certain matters. Naturally, all parties would like their claims decided as quickly as possible. Though generally such requests are disfavored in the interest of fairness to other parties who have been waiting for a longer time to have their matters heard, on occasion certain matters may be expedited, particularly where consolidation with an earlier filed claim is appropriate or where the request has broad support or because of the importance of the speedy resolution of a particular matter to both state and local agencies.

C. Joint Reasonable Reimbursement Methodologies (Joint RRM)s

A joint RRM and statewide estimate of cost (SEC, not to be confused with an SCE) is based on a settlement agreement between Finance and the local governments pursuant to Government Code section 17557.1 and 17557.2. The RRM and SEC remain in effect for five years, unless another term is provided in the agreement or the agreement is jointly terminated by the parties. The Commission can approve a joint RRM and proposed SEC simply with a showing that an agreement between Finance and a local entity has been reached, and that the joint methodology is broadly supported by a wide range of local agencies or school districts. If more joint RRM and SECs are negotiated by the parties, as was recommended in the 2009 BSA Report and by others, the agreements may result in less work required of Commission staff and would likely reduce auditing issues on reimbursement claims, since the claim would not need to be supported with documentation of actual costs incurred. To date, the Commission has adopted only one joint RRM and SEC, which took approximately three years for the parties to negotiate. The joint RRM and SEC were in effect for three fiscal years before the program was suspended by the Legislature. That joint RRM was extended through 2015 after which the parties let it lapse and Commission staff adopted parameters and guidelines for the program which require that, if the program is ever taken off suspension, claimants submit claims based on their actual costs incurred. Currently, there are no pending joint RRM.

V. Plan of Action

Despite the uncertainty caused by the many factors discussed in this report, only some of which are within the Commission’s control, Commission staff believes that the following updated plan to reduce the backlog can be achieved.

Support the Continued Informal Resolution of IRCs and Hear and Decide All Currently Pending IRCs, Which Are Not Settled, by September 2018.

The BSA 2009 Report shed light on the negative impacts both to the state and local governments posed by delays in deciding IRCs. From 2011 to present, Commission staff has redoubled its efforts to complete staff analyses for IRCs and to work with the parties to resolve IRCs. Commission staff will continue to work with the Controller and claimants to resolve these IRCs and currently has all pending IRCs tentatively scheduled for hearing by September 2018. However, whether the IRCs will actually be heard by September 2018 depends on a variety of factors, discussed below, including pending litigation and whether new test claims, PGAs, or MRs are filed in the interim.

Commission staff is continuing to work to complete the pending IRCs by encouraging the informal resolution of these claims, in addition to analyzing them for hearing and decision. Though this process may take longer than anticipated in the Commission's prior backlog reduction plans, positive strides toward resolving these claims are being made. Specifically, staff has been focusing on the completion of IRCs with cross cutting issues and is actively encouraging and facilitating meetings between the claimants and the SCO to resolve the remaining claims.

The Commission heard and decided one IRC in 2009-2010, 15 IRCs in 2010-2011, 11 IRCs in 2011-2012, zero IRCs in 2012-2013, four IRCs in 2013-2014, 18 IRCs in 2014-2015, 22 IRCs in 2015-2016, and 12 IRCs in 2016-2017. An additional 24 IRCs were informally resolved and withdrawn in 2011-2012 totaling 35 IRCs completed in that fiscal year. In 2012-2013, 42 IRCs were withdrawn, in 2013-2014, 18 were withdrawn, in 2014-2015, 10 were withdrawn, in 2015-2016, one IRC was dismissed for lack of prosecution and four IRCs were withdrawn after draft or proposed decisions were issued, and in 2016-2017, seven IRCs were withdrawn after draft or proposed decisions were issued as a result of this strategic approach.

Following the 2011 Commission decision on a single *Health Fee Elimination* IRC, Commission staff met with Controller staff and the claimants' representative to discuss how to proceed with the remaining *Health Fee Elimination* IRCs. Staff consolidated an additional two of these IRCs and they were heard and decided on January 31, 2014. These two particular *Health Fee Elimination* IRCs contained issues that were included in many of the remaining *Health Fee Elimination* IRCs. Completion of these two claims has spurred resolution of many of the *Health Fee Elimination* IRCs, and could result in speedier resolution of the remaining *Health Fee Elimination* IRCs.

Similarly, Commission decisions on some single-issue IRCs may clarify the Commission's interpretation of certain issues of law so that claimants can evaluate and consider the merits of potential future claims prior to filing and the Controller can consider that interpretation when conducting future audits or settlement negotiations. Therefore, staff may strategically select some of these IRCs for hearing in the near future where the issue is likely to recur. As stated above, all pending IRCs are tentatively set for hearing by September 2018. However, as new test claims, PGAs, or MRs are filed, those matters will be prioritized, potentially pushing the hearing on tentatively-set IRCs to later dates.

The Commission has many options for addressing IRCs. For example, it may be appropriate to consolidate IRCs filed by different claimants so that one analysis and decision are adopted by the Commission as discussed earlier under IV. Backlog Reduction Strategy. However, this only

works if the issues are the same, and the Controller's auditors were consistent in making claim reductions, based on similar documentation. It is possible that once the Commission determines one IRC, other claims on the same program will be settled and withdrawn based on that decision. But, it may also be necessary for the Commission to adopt individual decisions on IRCs filed on the same program because documentation and the way reimbursement claims were filed may differ. Most IRCs involve issues of law and fact. Thus, the analysis of each IRC requires legal, analytical, and audit review.

VI. Conclusion

Over the years, a significant backlog of test claims and IRCs accumulated in the Commission's pending caseload. The Commission is now focused on completing the test claim backlog, ensuring the speedy resolution of newly filed test claims, as well as completing the IRC backlog. This plan represents Commission staff's approach to reducing and ultimately eliminating that backlog as quickly as possible. It is important to note, however, that this ambitious plan is only an *estimate* of what can be completed in the coming years based on what staff knows as of July 1, 2017. Many factors beyond the control of Commission staff could increase the time it takes to eliminate the backlog.

A. Test Claim to Statewide Cost Estimate Tracking as of July 1, 2017

#	Program Name	Matter Number	Date Filed	Days delayed due to DOF Ext.	Days delayed due to DOF Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted	Date SCE Set, or Tentatively Set for Hearing
1.	California Assessment of Student Performance and Progress (CAASPP)	14-TC-01	Filed 12/23/14 Consolidated 8/14/15*	42	63	0	119	1/22/16	3/25/16	1/27/17
2.	Training for School Employee Mandated Reporters	14-TC-02	6/1/15	0	0	0	0	12/3/15	1/22/16	10/28/16
3.	California Assessment of Student Performance and Progress (CAASPP) II	14-TC-04	Filed 6/26/15 Consolidated 8/14/15*	0	0	0	0	1/22/16	3/25/16	1/27/17
4.	Local Agency Employee Organizations : Impasse Procedures	15-TC-01	6/2/16	0	0	23	0	1/27/17	Test Claim Denied	Test Claim Denied

*14-TC-01 and 14-TC-04 were consolidated for hearing on 8/14/15 which restarts the statutory clock for adopting an SCE. (2 CCR 1183.18(a)(7).)

Exhibits – Pending Workload

B. Test Claims as of July 1, 2017

#	Matter Number	Filed	Claimant	Name of Claim	Tentative Hearing Date
1.	16-TC-01	12/21/16	Fresno Unified School District	<i>Certificated School Employees: Parental Leave</i> Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)	9/22/17
2.	09-TC-03	6/30/10	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	<i>California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030</i>	12/1/17
3.	10-TC-11	6/30/11	County of Orange, Orange County Flood Control, District, Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo and San Juan Capistrano	<i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002</i>	1/26/18

#	Matter Number	Filed	Claimant	Name of Claim	Tentative Hearing Date
4.	10-TC-01 (Consolidated with 10-TC-2, 10-TC-03, and 10-TC-05)	10/11/10	City of Brisbane	<i>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 iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i>	3/23/18
5.	10-TC-02, (Consolidated with 10-TC-01, 10-TC-03, and 10-TC-05)	10/13/10	City of Alameda	<i>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 iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i>	3/23/18
6.	10-TC-03, (Consolidated with 10-TC-01, 10-TC-02, and 10-TC-05)	10/14/10	County of Santa Clara	<i>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 iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i>	3/23/18
7.	10-TC-05, (Consolidated with 10-TC-01, 10-TC-02, and 10-TC-03)	11/30/10	City of San Jose	<i>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 iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i>	3/23/18

#	Matter Number	Filed	Claimant	Name of Claim	Tentative Hearing Date
8.	10-TC-07	1/31/11	Riverside County Flood Control & Water Conservation District, the County of Riverside, and the Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto	<i>California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033</i>	3/23/18
9.	16-TC-02	6/26/17	Fairfield-Suisun Unified School District	<i>Cal grant: Grade Point Average and Graduation Certification</i>	3/23/18
10.	11-TC-03	11/10/11	County of Riverside, Riverside County Flood Control & Water Conservation District and the Cities of Murrieta, Temecula and Wildomar	<i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016</i>	5/25/18
11.	11-TC-01	8/26/11	County of Ventura and Ventura County Watershed Protection District	<i>California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108</i>	7/27/18

#	Matter Number	Filed	Claimant	Name of Claim	Tentative Hearing Date
12.	10-TC-10	6/30/11	San Bernardino County Flood Control District, County of San Bernardino, Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland, Montclair, Ontario and Rancho Cucamonga	<i>Santa Ana Region Water Permit – San Bernardino County</i> California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0036, effective January 29, 2010	7/27/18
13.	13-TC-01	6/30/14	Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Covina, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, San Marino, Santa Clarita, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier	<i>Los Angeles Region Water Permit – Cities of Los Angeles</i> California Regional Water Quality Control Board Los Angeles Region, Order No. R4-2012-0175	9/28/18
14.	13-TC-02	6/30/14	County of Los Angeles and Los Angeles County Flood Control District	<i>Los Angeles Region Water Permit – County of Los Angeles</i> California Regional Water Quality Control Board Los Angeles Region, Order No. R4-2012-0175	9/28/18

#	Matter Number	Filed	Claimant	Name of Claim	Tentative Hearing Date
15.	14-TC-03	6/29/15	County of San Diego	<i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001</i>	9/28/18
16.	15-TC-02	6/30/16	County of Orange, Orange County Flood Control District, and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano	<i>San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001</i> California Regional Water Quality Control Board San Diego Region Order No. R9-2015-0100, an Order Amending Order No. R9-2013-0001, NPDES No. CAS 0109266, as Amended by Order No. R9-2015-0001, Adopted on November 18, 2015	1/25/19

C. Parameters and Guidelines as of July 1, 2017

#	Matter Number	Test Claim Filing Date	Date Test Claim Decision Adopted	Claimant	Name of Test Claim	Tentative Hearing Date
1.	07-TC-09	6/30/08	3/26/10	County of San Diego	<p><i>Discharge of Stormwater Runoff</i> California Regional Water Quality Control Board, San Diego Region, Order No. R9-2007-001, (NPDES No. CAS0108758); Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, adopted on January 24, 2007</p>	Inactive pending outcome of litigation

D. Statewide Cost Estimate as of July 1, 2017

#	Matter Number	Filing Date	Date Test Claim Decision Adopted	Date Ps&Gs Adopted	Date Claims Due from Controller ⁴⁶	Claimant/Requester	Name of Matter	Tentative Hearing Date
1.	03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21	9/5/03, Refiled 10/18/07	7/31/09	3/24/11	9/28/11	County of Los Angeles, Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Westlake Village, Azusa, Commerce, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill	<i>Municipal Storm Water and Urban Runoff Discharges</i> Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4Fc3	Inactive pending outcome of litigation

⁴⁶ Estimated date based on the issuance or expected issuance of Controller's claiming instructions.

E. Incorrect Reduction Claims as of July 1, 2017

#	Matter Number	Filing Date	Claimant	Fiscal Year	Name	Type	Tentative Hearing Date
1.	10-4206-I-32	9/1/10	State Center Community College District	2002-2003, 2003-2004, 2005-2006, 2006-2007	Health Fee Elimination	CCD	7/28/17
2.	13-0007-I-02	6/19/14	Sierra Joint Community College District	1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010	Integrated Waste Management	CCD	7/28/17
3.	14-0007-I-04	7/14/14	Gavilan Community College District	1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011	Integrated Waste Management	CCD	9/22/17

#	Matter Number	Filing Date	Claimant	Fiscal Year	Name	Type	Tentative Hearing Date
4.	14-0007-I-05	7/14/14	State Center Community College District	1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011	Integrated Waste Management	CCD	12/1/17
5.	14-0007-I-06	7/14/14	Victor Valley Community College District	1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010	Integrated Waste Management	CCD	12/1/17
6.	14-0007-I-07	7/17/14	El Camino Community College District	2000-2001, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008	Integrated Waste Management	CCD	1/26/18

#	Matter Number	Filing Date	Claimant	Fiscal Year	Name	Type	Tentative Hearing Date
7.	14-0007-I-08	7/31/14	North Orange County Community College District	2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011	Integrated Waste Management	CCD	3/23/18
8.	14-0007-I-09	8/11/14	Long Beach Community College District	2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011	Integrated Waste Management	CCD	3/23/18
9.	14-0007-I-11	6/9/15	San Bernardino Community College District	1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2010-2011	Integrated Waste Management	CCD	5/25/18

#	Matter Number	Filing Date	Claimant	Fiscal Year	Name	Type	Tentative Hearing Date
10.	15-0007-I-12	3/15/16	San Mateo Community College District	2003-2004, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011	Integrated Waste Management	CCD	5/25/18
11.	15-9913-I-02	6/27/16	North Orange County Community College District	1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011	Enrollment Fee Collection and Waivers	CCD	7/27/18
12.	14-0007-I-10	8/14/14	Redwoods Community College District	1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006	Integrated Waste Management	CCD	7/27/18
13.	14-9825-I-02	6/9/15	Carlsbad Unified School District	2005-2006, 2006-2007, 2007-2008, 2008-2009	The Stull Act	K-12	9/28/18

#	Matter Number	Filing Date	Claimant	Fiscal Year	Name	Type	Tentative Hearing Date
14.	16-4435-I-56	6/8/17	Grossmont Union High School District	2008-2009, 2009-2010	Graduation Requirements	K-12	9/28/18

F. Parameters and Guidelines Amendments as of July 1, 2017

#	Matter Number	Date Filed	Requester	Program	Tentative Hearing Date
1.	11-PGA-03 (CSM-4435)	7/25/11	Department of Finance	<i>Graduation Requirements</i>	Inactive at request of claimant pending court action