

September 14, 2020

Ms. Keely Bosler, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

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

Dear Ms. Bosler:

Enclosed is the Commission on State Mandates' *2020 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 2020, chapter 6 (SB 74).

Sincerely,



Heather Halsey
Executive Director

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



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DIRECTOR OF FINANCE: 2020 REPORT ON WORKLOAD LEVELS AND BACKLOG REDUCTION PLAN

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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 2020 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, 2015, 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 resulted from several factors:

- 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 – Statutes 2002, chapter 1124 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, resulting in 22 test claims being filed in the 2003-2004 fiscal year.
- 2004-2009 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claim decisions, which the Commission did. 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 since filed 45 NPDES permit test claims. The Commission decided five of the first of these claims filed, but litigation on those decisions addressing the threshold issue of

¹ Statutes 2020, chapter 6 (SB 74), Item 8885-001-0001, Provision 2.

² Beginning fiscal year 2013-2014 the Commission's staff was increased by two PYs to 12.5 and beginning fiscal year 2019-2020 was increased by one-half PY to 13.

whether NPDES permits impose state or federal mandates, was pending in the courts since June 2010 and the then remaining 13 claims were placed on inactive status pending the California Supreme Court decision on this issue, which was issued on August 29, 2016. During that time, one of the inactive claims was withdrawn because it was a duplicate claim. Since 2016, 27 new NPDES test claims have been filed. Currently, 39 NPDES test claims are 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 200,000 pages. Additionally, there is active litigation pending addressing several of the issues raised in these remaining claims in various courts and postures. As a result, these claims are taking longer to complete than typical test claims filed on a statute or regulation.

C. Staffing and Workload

As of July 1, 2020, the Commission has a pending caseload of 42 test claims,³ two parameters and guidelines,⁴ and three statewide cost estimates (SCEs).⁵ These items have statutory deadlines for completion and are prioritized over other items.

Also currently pending are nine incorrect reduction claims (IRCs) which were filed between fiscal years 2017-2018 and 2019-2020, and one parameters and guidelines amendment (PGA).⁶ 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.⁷

For the 2019-2020 fiscal year, the Commission had 13 PYs, with the addition of .5 of a PY for an Associate Governmental Program Analyst- HR, which was added in the 2019-2020 budget and filled in late October 2019. However, the Commission experienced turnover in its attorney I position and in two of its three attorney III positions (75% of Commission staff attorneys) resulting in vacancies in those positions for an average of 5.33 months each due to the time required for the recruitment process. Additionally, one of the Commission's employees was subject to redirection for the contact tracing program beginning in May 2020. Therefore, the Commission was down approximately 1.75 PY for the year (due to vacancies, recruitment, and redirection) and had a real staffing level of 11.25 PY and a 30 percent reduction in attorney staffing (plus the time to onboard and train three new attorneys) for the 2019-2020 fiscal year.

³ This includes 39 NPDES permit test claims.

⁴ One of these two parameters and guidelines is on inactive status, pending the outcome of litigation on the underlying test claim decision which is currently pending in the Second District Court of Appeal.

⁵ One of these three SCEs has been on inactive status for several years pending the outcome of litigation on the underlying test claim decision and that case on remand, is now being appealed in the Second District Court of Appeal.

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

⁷ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

One of the Commission's attorney III positions was reclassified as an attorney IV position for recruitment and retention purposes and to address the increasing complexity of pending matters. All vacant staff attorney positions were filled in the Spring of 2020.

During the 2019-2020 fiscal year, the Commission completed two test claims, two parameters and guidelines, two parameters and guidelines amendments, two SCEs, two requests for mandate redetermination, one request for mandate redetermination to be set aside as directed by court action, one request for mandate redetermination reconsideration based on court action, one IRC, and one order to set aside a decision, for a total of 14 matters heard by the Commission, in addition to litigation, administrative, and other workload. The Commission also had seven cases pending in the courts, which required significant staff time to brief and argue. Many of the matters completed in 2019-2020 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 working on draft proposed decisions for the stormwater claims, which have yet to be issued and recruiting new attorneys to staff the Commission.

D. Backlog Reduction Plan

There are currently 42 test claims pending, all of which were filed by local agencies. Of the pending claims, 39 are filed on NPDES permits issued by the regional water quality control boards, 13 of which were placed on inactive status pending the outcome of litigation in the California Supreme Court addressing the issue of whether the permits imposed a federal mandate. The Supreme Court issued its decision on August 29, 2016, and these claims are now tentatively set for hearing between December 4, 2020 and July 28, 2023. These claims are large, complex, raise issues that are currently being litigated, and are not suited for a speedy determination. Of the three non-NPDES test claims filed in 2019-2020 one was filed on October 15, 2019 and is set for hearing on July 24, 2020, one was filed on March 19, 2020 and is set for hearing on September 25, 2020, and one was filed on December 31, 2019 but is not set for hearing until December 4, 2020 due to extension and postponement requests by the parties.

Of the two pending parameters and guidelines, one is set for hearing on September 25, 2020 and one remains on inactive status pending court action on the underlying Test Claim Decision. Of the three pending SCEs, one is set for hearing on July 24, 2020, one is tentatively set for hearing on December 4, 2020, and one remains on inactive status pending court action on its underlying Test Claim Decision. 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.

With regard to MRs, there are zero pending as of July 1, 2020. Therefore, there is no MR backlog.

Additionally, there is one PGA pending and it is inactive pending court action in the CSBA case.⁸ Therefore, there is no PGA backlog.

⁸ *California School Board Association (CSBA) v. State of California et al.*, California Supreme Court, Case No. S247266 (Budget trailer bills (Education Code sections 42238.24 and 56523)).

Finally, there are currently only nine IRCs pending, three of which were filed in the 2017-2018 fiscal year, one of which was filed in the 2018-2019 fiscal year, and five of which were filed in the 2019-2020 fiscal year and all of these are tentatively set for hearing through December 2021. Therefore, the IRC caseload is no longer considered “backlogged.”

Based on the above, the only backlogged matters remaining are the 42 test claims and this is primarily due to the NPDES permit test claims being complex, voluminous, and many of the pending issues in these claims currently being litigated.

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 MRs and PGAs, 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 helped to spur informal resolution of these claims between the claimants and the State Controller’s Office (Controller). In 2015, there was a backlog of 41 IRCs and now there are only nine IRCs pending. Though most IRCs are not suitable for consolidation, since they pose unique issues of fact or law and so must be analyzed individually, 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.

Based on the tentatively scheduled hearing dates for the currently pending nine IRCs, IRCs filed in 2020-2021 should be heard within one to two years of their filing date. This represents 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, MRs, and PGAs are filed or if there is a temporary (such as staff turnover or furloughs) or permanent reduction in staff. Whether the completion of currently pending IRCs takes less time or more time than the staff expectation of approximately December 2021 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, thereby eliminating it, and has allowed new (non-NPDES) test claim filings to be immediately analyzed and set for hearing upon closure of the record. Beginning in the 2013-2014 fiscal year, Commission staff started tracking how long it takes to complete each test claim, excluding the NPDES permit claims, from the filing date to the adoption of the SCE. Test claims that are amended, severed, or consolidated restart the clock for the statutory deadline.⁹ Additionally, 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 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

⁹ Title 2, California Code of Regulations, Section 1183.18.

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

and deducting that time from the time it takes to adopt an SCE once a test claim is filed.¹¹ For test claims filed since July 1, 2013, the Commission has been adopting decisions within an average of 244 days (not including the average of 55 days tolled) and SCEs within an average of 335 days from the filing of the test claim (not including the average of 289 days tolled) from the date of the test claim filing.¹²

E. Administrative Workload

In addition to the general duties of state agencies relating to human resources, budget, accounting, procurement, and maintaining and providing access to public records more generally that Commission staff must perform, Commission staff must also fulfill the specific duty of the executive director to “keep a full and true record of all proceedings of the Commission . . .” pursuant to Government Code 17530.

However, during the second half of the 2019-2020 fiscal year, administrative staff was focused on the Commission’s response to COVID-19. Several plans, policies, and protocols pertaining to telework, office reopening, and health and safety measures, were prepared, adopted, and implemented. Doing so involved significant time and effort from all Commission staff.

¹¹ See Exhibit A.

¹² Pursuant to Commission regulations, days representing extensions of time and postponements of hearings granted to the parties (section 1183.18(a)(2)), days following a test claimant’s submission of incomplete information, from the date on which Commission staff returns the incomplete information to the claimant up to the date on which the Commission receives complete information from the test claimant (section 1183.18(a)(3)), and days between the effective date of the parameters and guidelines and the date the initial reimbursement claims are due to the Office of the State Controller (section 1183.18(a)(8)), shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the Commission.

2020 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 governments (claimants, which may include cities, counties, special districts, K-12 school districts, and community college districts) 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 governments that they are entitled to be reimbursed by the state for costs mandated by the state.¹⁶

Under the mandates process, local governments may file “test claims” with the Commission alleging that statutes, regulations, and executive orders enacted by the Governor, the Legislature, or state agencies, impose new programs or increased levels of service upon local entities. A “test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.¹⁷

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.¹⁸ 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

¹³ Government Code section 17500.

¹⁴ Government Code section 17500.

¹⁵ Government Code section 17552.

¹⁶ Government Code section 17551.

¹⁷ Government Code section 17521.

¹⁸ Government Code section 17553.

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 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 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 thus would presumably also reduce the number of incorrect reduction claims (IRCs) filed with the Commission, and was originally proposed by the Legislative Analyst's Office (LAO) for these reasons. However, the process of adopting an RRM pursuant to Government Code 17557 increases the workload of the Commission on the front end 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, 2020, the Commission has adopted five, denied five, and dismissed four withdrawn RRM proposals submitted pursuant to 17557- most during fiscal years 2013-2014 through 2015-2016. However, Statutes 2016, Chapter 31, amended Government Code section 17518.5 to require that RRM "based in whole or in part on costs included in reimbursement claims submitted to the Controller, only use costs that have been audited by the Controller" and no RRM have been proposed since. Since this language requiring audited costs sunsetted effective July 1, 2019, there may be RRM proposed for inclusion in in parameters and guidelines in the future.

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 affected local governments, 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.

The Commission is also required to hear and decide other claims that affect the workload of the Commission. These include: 1) IRCs filed by local governments alleging that the Controller has incorrectly reduced reimbursements; 2) mandate redeterminations (MRs); 3) proposed amendments to previously adopted parameters and guidelines (PGAs); and 4) review of the

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

Controller's claiming instructions. There is no statutory timeframe for completing IRCs, MRs, PGAs, or the review of claiming instructions. 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.²⁰ 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.

B. Historic Reasons for the Backlog

The backlog resulted from several factors:

- 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 – Statutes 2002, chapter 1124 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 a high of 17 PYs to a low of 9.5 PYs.²¹
- 2004 – Statutes 2004, chapter 890 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, resulting in 22 test claims being filed in the 2003-2004 fiscal year.
- 2004-2009 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claim decisions, which the Commission did. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed the Commission to set several reconsideration decisions aside.
- 2010 to present – *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, thus prohibiting 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 since filed 45 NPDES permit test claims. The Commission decided five of these claims and one of these claims was withdrawn because it was duplicative, but litigation on those decisions (a Los Angeles permit case and a San Diego permit case), addressing the threshold issue of whether NPDES permits impose a state or a federal mandate, whether the activities required by the permits impose a new program or higher level of service and, if so, whether the claimants have fee authority sufficient to fund the costs of the program, among other issues, has been pending in the courts since June 2010 and the remaining NPDES claims were placed on inactive status.

²⁰ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

²¹ Beginning fiscal year 2013-2014 the Commission's staff was increased by two PYs to 12.5 and beginning fiscal year 2019-2020 was increased by one half PY to 13.

On August 29, 2016, the California Supreme Court issued a decision in the Los Angeles case, *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 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. On February 9, 2018, the Los Angeles Superior Court issued a minute order and statement of decision on remand, finding that the Test Claim Permit does not impose a new program or higher level of service as follows: "There is no doubt the permit (which only applies to local governments) 'uniquely' imposes the receptacle and inspection requirements on local governments. However, the relevant 'state policy' implemented by the permit is the federal and state law prohibition against unlawful discharges. That policy 'applies generally to all residents and entities in the state.'" The court also found that the fee authority issues are therefore moot. On April 13, 2018, the court denied the claimants' request for reconsideration. Judgment was entered on July 9, 2018. On September 4, 2018 the claimants filed a notice of appeal in this case and briefing is currently ongoing in this matter in the Second District Court of Appeal.

The San Diego case also raised similar issues, and some new ones. On December 19, 2017, the Third District Court of Appeal issued a published decision reversing the decision of the trial court and upholding the Commission's decision on the state mandate issue. (*Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661.) The court determined that the trial court used the wrong standard and so the court applied the standard recently upheld by the California Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749. Under the Supreme Court's test, the permit terms are mandated by the federal government when they are expressly required by federal law, or were adopted by the Regional Board as only means by which the federal "maximum extent practicable" standard can be met. In this case, the court agreed with the Commission's Test Claim Decision that the challenged activities are not expressly required by federal law. The court further found that although the activities may have been "necessary" to meet the maximum extent practicable standard, as argued by the State, nowhere in the record did the San Diego Regional Board find its conditions were the only means by which the permittees could meet the standard. Thus, the court determined that the San Diego Regional Board exercised true discretion when imposing the new requirements and that the requirements were mandated by the state. The court of appeal did not reach the new program or higher level of service and fee authority issues, and remanded the matter to the trial court to determine those issues. This matter was heard in the Sacramento Superior Court on December 6, 2019, and on January 2, 2020, the court issued a request for additional briefing from all parties, including the Commission, and those briefs were filed. The court's order, signed February 6, 2020, affirmed the Commission's Decision in full. The court made the following key findings: that the permit imposes a new program or higher level of service, the challenged permit requirements were mandated by the Regional Board, and were not imposed as a result of the permittees' discretionary decision to request a management permit, and the Commission correctly concluded that the permittees have fee authority to comply

with the Hydromodification Management Plan and Low Impact Development requirements, and those activities are properly denied. The Commission also correctly concluded that the fee authority for the remaining activities required voter approval under Proposition 218 and, thus, the fee authority is not sufficient as a matter of law. The court also found that SB 231, enacted in 2017 which makes stormwater exempt from the voter approval requirement in Proposition 218 (thus requiring only a voter protest) does not retroactively apply to this Decision, which has a period of reimbursement beginning January 24, 2007. An appeal and cross appeal have been filed in this matter.

The 39 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 200,000 pages. In addition, several of the issues raised are currently being litigated, as discussed above. As a result, they will take longer to complete than typical test claims.

II. Commission Workload Considerations

A. Workload Completed in 2019-2020

In 2019-2020, the Commission completed three test claims, two parameters and guidelines, two parameters and guidelines, two SCEs, two mandate redeterminations, one request for mandate redetermination to be set aside as directed by court action, one request for mandate redetermination reconsideration based on court action, one IRC, and one order to set aside a decision. The Commission also had seven cases pending in the courts during 2019-2020, many of which required significant staff time to brief and argue. Many of the claims completed in 2019-2020 addressed complex issues regarding constitutional law, federal law, and issues of procedure and many of these issues were issues of first impression.

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 9.625 positions. Around the same time, Statutes 2002, chapter 1124 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, one was eliminated and two were made permanent in 2007. However, as a result of budget cuts in 2008 and 2009, the two new permanent 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. Beginning July 1, 2014, the Commission had authority for 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 analyst positions, and one office technician. Beginning July 1, 2019, the Commission has an additional half associate governmental program analyst position to perform the Commission’s human resources related duties for a total of 13 PYs. And, beginning January 24, 2020, the Commission reclassified one of three attorney III positions to an attorney IV position. Due to the lack of administrative staff, executives and managers personally perform staff-level administrative duties which has slowed down the mandate determination process. As a result, the Department of Finance approved a budget change proposal for the 2020-2021 budget for 1.5 additional associate governmental program analyst positions to perform human resources, procurement, and budgeting duties. Unfortunately, due to the increased costs and decreased revenues as a result of the COVID-19 pandemic, this proposal like those of most agencies was withdrawn.

Additionally, there has been significant turnover in the attorney positions. Out of a total of four staff attorney positions, three experienced turnover in 2019-2020 and two experienced turnover in 2017-2018. These are the primary positions involved in preparing the legal analysis of proposed mandate decisions for hearing. The legal practice at the Commission is very specialized. There are only a handful of mandates law attorneys in the state and the work is very complex, detail oriented, and the analyses are lengthy. To be successful, an attorney must be comfortable with constantly learning new areas of law and developing a deep understanding of the programs, laws, and funding involved, which may involve several complex issues, all of which need to be flushed out and explained concisely in plain English. The research is very academic, painstakingly detail-oriented, and solitary, and the office tends to be very quiet, which does not suit every attorney. Finding attorneys who possess these skills and an academic temperament such that they can enjoy digging deeply as they must, can timely produce voluminous and complex analyses as is statutorily required, and can work quietly for extended periods of time with little interaction as is often necessary, is a constant challenge for the Commission. As a result, these positions have significant recruitment and retention challenges. In addition to the challenges of recruiting an attorney with the requisite skills and temperament, there has been a perceived lack of promotional opportunities at the Commission, and there is competition with the private sector and with local agencies and other state agencies that have greater promotional opportunities. Once an attorney promotes to attorney III, there has been little room for advancement at the Commission unless the attorney chose to pursue an executive position as chief legal counsel or executive director. This Spring, the Commission reclassified one attorney III position as an attorney IV position, for recruitment and retention purposes and due to the complexity of the work and the fact that Commission attorneys litigate their own matters all the way up to the California Supreme Court in some cases. It is hoped and

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

anticipated that this re-class will help to reduce the trend of experienced Commission attorneys separating from the Commission to promote elsewhere.

Table A. shows completed workload and position authority for the past five 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 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 2015-2016 to 2019-2020²³

| Matters Completed | 2015-2016 | 2016-2017 | 2017-2018 | 2018-2019 | 2019-2020 |
|--|-----------|-----------|-----------|-----------|-----------|
| Test Claims | 3 | 1 | 4 | 5 | 2 |
| Parameters and Guidelines | 2 | 0 | 1 | 2 | 2 |
| Parameters and Guidelines Amendments | 5 | 0 | 0 | 0 | 2 |
| Requests for Reconsideration | 0 | 1 | 0 | 0 | 0 |
| Statewide Cost Estimates | 2 | 3 | 0 | 1 | 2 |
| Requests to Review Claiming Instructions | 0 | 0 | 0 | 0 | 0 |
| Requests for Mandate Redetermination | 3.5 | 0 | 0 | 0 | 2 |
| Requests for Mandate Redetermination to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action | 0 | 0 | 0 | 0 | 1 |

²³ This table does not reflect work completed for litigation, regulations, and special projects, nor does it reflect staff turnover. Substantial resources were expended on seven litigation matters, a regulation package was adopted, the workforce planning process was started and is nearing completion, and the Commission’s attorney I position and two of the Commission’s three attorney III positions experienced turnover in fiscal year 2019-2020 and were working on NPDES permit related test claims, which are yet to be completed and had to be reassigned to new Commission attorneys.

| Matters Completed | 2015-2016 | 2016-2017 | 2017-2018 | 2018-2019 | 2019-2020 |
|---|------------------|------------------|-----------|-----------|-----------|
| Requests for Mandate Redetermination Reconsideration Based on Court Action | 0 | 0 | 0 | 0 | 1 |
| Incorrect Reduction Claims | 27 ²⁴ | 19 ²⁵ | 8 | 4 | 1 |
| Appeal of Executive Director Decisions | 1 | 0 | 0 | 0 | 0 |
| Order to Set Aside a Test Claim, Parameters and Guidelines, or Incorrect Reduction Claim Decision | 0 | 0 | 0 | 0 | 1 |
| Personnel Years | 12.5 | 12.5 | 12.5 | 12.5 | 13 |

C. Pending Workload

The Commission's current caseload consists of: test claims, parameters and guidelines, SCEs, IRCs, MRs, and PGAs. Workload also consists of regulatory actions, litigation, and inquiries from the Legislature and state agencies, as well as administrative workload including budget, procurement, human resources, public records, and public meetings requirements.

Table B. Pending Workload as of June 30, 2020

| Type of Action | Number Pending |
|---|-----------------------|
| Test Claims ²⁶ | 42 |
| Incorrect Reduction Claims ²⁷ | 9 |
| Proposed Parameters and Guidelines ²⁸ | 2 |
| Proposed Parameters and Guidelines Amendments ²⁹ | 1 |

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

²⁵ 12 decided, seven withdrawn.

²⁶ All 42 test claims were filed by local agencies. See Exhibit B.

²⁷ See Exhibit E.

²⁸ See Exhibit C.

²⁹ See Exhibit F.

| | |
|--|-----------------------|
| Mandate Redeterminations | 0 |
| Statewide Cost Estimates ³⁰ | 3 |
| Litigation Matters Pending | 6 |
| Regulatory Actions | 0 |
| Responding to inquiries from the Legislature, LAO, BSA, and other state and local agencies | Ongoing ³¹ |

Test Claims

There are 42 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 permit 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 | 6 | 6 |
| 2011-2012 | 0 | 2 | 2 |
| 2012-2013 | 0 | 0 | 0 |
| 2013-2014 | 0 | 2 | 2 |
| 2014-2015 | 0 | 1 | 1 |
| 2015-2016 | 0 | 1 | 1 |
| 2016-2017 | 0 | 2 | 2 |
| 2017-2018 | 0 | 24 | 24 |
| 2018-2019 | 0 | 0 | 0 |
| 2019-2020 | 0 | 3 | 3 |
| Totals | 0 | 42 | 42 |

³⁰ See Exhibit D.

³¹ The Commission regularly responds to inquiries from the Legislature, LAO, and other state and local agencies regarding mandates. Since the Commission obtained additional staff, it is now fully in compliance with BSA’s recommendations.

Parameters and Guidelines

Currently, there is one parameters and guidelines which is active and pending and 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 all parameters and guidelines immediately upon an approved or partially approved test claim. Therefore, parameters and guidelines can be heard as soon as two Commission hearings after the test claim decision is adopted, thus preventing a backlog in parameters and guidelines.

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

| Year Test Claim Decision Adopted | School District (K-14) | Local Agency | Total |
|---|-------------------------------|---------------------|-----------------|
| 2009-2010 | 0 | 1 | 1 ³² |
| 2019-2020 | 0 | 1 | 1 |
| Totals | 0 | 2 | 2 |

Statewide Cost Estimates

Existing law requires the Commission to adopt a SCE within 12 to 18 months of a test claim filing, if 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 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 set 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 PGA has been adopted (which may be triggered by a

³² Pending Action of the Third District Court of Appeal - *Discharge of Stormwater Runoff*, 07-TC-09.

request for a PGA or mandate redetermination) that may change the state’s liability due to a clarification of the mandated program, a change in reimbursement method, or a subsequent change in law. 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 ³³ | 1 |
| 2019-2020 | 1 | 1 | 2 |
| Totals | 1 | 2 | 3 |

Incorrect Reduction Claims (IRCs)

The IRC caseload is no longer backlogged. As of July 1, 2020, there are nine IRCs pending, that allege a total of \$4,990,165 in incorrect reductions to mandate reimbursement claims. All are now tentatively set for hearing through December 2021. 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 Year³⁴ |
|------------------------------|--------------------------------------|----------------------------|---|
| 2017-2018 | 0 | 3 | 3 |
| 2018-2019 | 0 | 1 | 1 |
| 2019-2020 | 1 | 4 | 5 |
| Totals | 1 | 8 | 9 |

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, IRCs are filed on individual reimbursement claims filed by a single claimant.³⁵ 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.

³³ Inactive pending final disposition of *Department of Finance v. Commission on State Mandates* on remand and currently pending in the Second District Court of Appeal – *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21.

³⁴ As of July 1, 2020.

³⁵ California has 58 counties so county claims are limited to 58 potential IRCs per program, per year. However, audits of mandate reimbursement claims of cities, school districts, and special districts create the potential for many more IRCs per program, per year (currently there are a total of 90 audits that are within the three-year period of limitation to file an IRC and could potentially result in an IRC filing).

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

| Local Agency Claims | Number of IRCs | Reduction Amount |
|---|-----------------------|-------------------------|
| <i>Animal Adoption</i> | 1 | \$2,105,792 |
| <i>Crime Statistics Reports for the Department of Justice (DOJ)</i> | 1 | \$372,127 |
| <i>Local Government Employee Relations</i> | 1 | \$50,459 |
| <i>Municipal Storm Water and Urban Runoff Discharges</i> | 5 | \$2,034,469 |
| Subtotal | 8 | \$4,562,847 |
| School District Claims | | |
| <i>The Stull Act</i> | 1 | \$427,318 |
| Subtotal | 1 | \$427,318 |
| TOTAL | 9 | \$4,990,165 |

Parameters and Guidelines Amendments (PGAs)

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

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

| Fiscal Year Filed | K-14 | Local Agency | State Controller | Department of Finance | Totals |
|--------------------------|-------------|---------------------|-------------------------|------------------------------|---------------|
| 2011-2012 | 0 | 0 | 0 | 1 ³⁶ | 1 |
| Totals | 0 | 0 | 0 | 1 | 1 |

³⁶ On inactive status, pending the outcome of litigation in *CSBA v. Department of Finance* pending in the Third District Court of Appeal.

III. Challenges to Reducing the Backlog

As of July 1, 2020, the Commission has 42 test claims pending.³⁷ Additionally, the current caseload of the Commission includes parameters and guidelines, SCE's, IRCs, 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, prepare SCEs, hear mandate redetermination requests, hear requests to amend parameters and guidelines, hear requests to review the Controller's claiming instructions, 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, and required by the Constitution, which allow for party, interested party, and public 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, nearly all of the Commission's staff resources will be shifted to conduct the required investigation, hearing, and determination.

Parties are authorized to request extensions of time to file comments and postponement of hearing on quasi-judicial matters pending before the Commission. 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 that result in delays and for 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 regulation package to clarify the mandates process. For four of the past five fiscal years, the Commission has adopted a general clean up package prepared by Commission staff. The next scheduled clean up package will begin in 2020-2021.

B. Litigation

The Commission was involved in seven significant litigation matters in 2019-2020.

The Commission staff handled the following cases at the trial court level:

- *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*,
Sacramento County Superior Court, Case No. 2019-80003169
(*Lead Sampling in Schools: Public Water System No. 3710020 (17-TC-03)*)

³⁷ In addition to the 39 NPDES claims, this number includes three non-NPDES test claims filed in the 2019-2020 fiscal year.

- REMAND of *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*,
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
California Supreme Court, Case No. S239907
Fourth District Court of Appeal, Division One, Case No. D068657
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)
- REMAND OF *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*
California Supreme Court, Case No. S247266
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
(Mandates process for K-12 school districts, redetermination statutes, budget trailer bills (Education Code sections 42238.24 and 56523))

In addition, two matters were 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.]

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 new program or higher level of service exists and whether local agencies have fee authority sufficient to cover the costs of the services provided.³⁸ While Commission staff is not actively briefing on these matters, staff has filed responses and is actively monitoring the cases and answering questions from the court and the parties.

³⁸ 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 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. On remand, the Los Angeles County Superior Court (Case No. BS130730) found that the permit did not constitute a new program or higher level of service. Judgment was entered July 13, 2018. That decision has now been appealed to the Second District Court of Appeal, Case No. B292446.

A decision in the other NPDES matter was issued by 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*)), finding, consistently with the Supreme Court, that the permit provisions were mandated by the state. The Sacramento County Superior Court on remand, in Case No. 34-2010-80000604, found that the activities imposed a new program or higher level of service and agreed with the Commission’s fee authority findings. Those issues have now been appealed to the Third District Court of Appeal, Case No. C092139.

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 39 pending NPDES permit claims and the litigation on the five test claims already decided under this program currently pending in the Second and Third District Courts of Appeal make up a significant portion of the current caseload. 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 39 NPDES claims will be completed by the July 2023 Commission meeting. However, some of these matters may be consolidated for hearing in the future, if appropriate, which might speed the process.

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 government 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 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 originally 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 more than the time required for a test claim analysis. There are currently no proposed RRM 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.³⁹ 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 nine IRCs pending as of July 1, 2020. However, since the beginning of the 2017-2018 fiscal year, the Controller has issued approximately 92 audit reports on 16 mandated programs.⁴⁰ The FY 19-20 audits were on the following programs for local agencies: *Crime Statistics Reports for the Department of Justice* (6), *Domestic Violence Arrest Policies and Standards* (2), *Domestic Violence Background Checks* (2), *Identity Theft* (3), and *Open Meetings Act/Brown Act Reform* (3). For K-12 school districts, the FY 19-20 audits were completed on: *California Assessment of Student Performance and Progress* (6), and *The Stull Act* (1). For community college districts, FY 19-20 audits were completed on *Minimum Conditions for State Aid* (2). It is possible that, in response to recent Controller audits, and the fact that 92 of them are currently within the period of limitation for filing an IRC, that numerous IRCs will be filed in the near future.

D. Administrative Workload

In addition to the processing and legal analysis of mandate related matters, Commission staff are responsible for all of the general administrative duties of a state agency, including budgeting, procurement, human resources, and public records related duties and the specific duty of the executive director to "keep a full and true record of all proceedings of the Commission. . ." pursuant to Government Code 17530.

³⁹ 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.

⁴⁰ The period of limitations to file an IRC is three years (2 CCR 1185.1).

COVID-19

On March 19, 2020, the State Public Health Officer and Director of the California Department of Public Health issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population. This order remains in place, with modifications, and is expected to stay in place for the duration of the pandemic to protect the public health.

The Commission closed its physical office from March 19, 2020 through Phases 1 and 2 of the pandemic, to stop the spread of COVID-19 and protect the health of Commission employees and the public. However, in Phase 3, as required by Government Code section 11020, the Commission has reopened its physical office for the limited purposes to “direct members of the public and conduct state business” from 8 a.m. to 5 p.m., Monday-Friday, except for State Holidays.

As part of the Commission’s COVID-19 emergency plan, it was determined that approximately 95 percent of the Commission’s mission critical functions, including those more optimally performed in person such as meetings, could be performed remotely, which they have since March 19, 2020. However, staff, parties, and members alike look forward to the day when we can safely meet again in person. In the meantime, the critical functions to be performed in the office to “direct members of the public and conduct state business” include, primarily, answering the telephone and door, processing mail and packages, and filing and serving paper documents when necessary.

Additionally, to maintain adequate flow of movement with physical distancing and sufficient access to the kitchen for breaks and handwashing and to avoid large numbers of staff in elevators and bathrooms, rotational work is required. Staffing in the office during the Phase 3 reopening will be limited to a maximum of two Commission employees per day until further notice.

Redirection of Staff

Like all other state agencies, the Commission was required to redirect 5 percent of its staff for the COVID-19 contact tracing effort, which equates to one PY out of the Commission’s 13 PYs. As a result, the Commission’s already very small staff is down by one PY, an administrative position, and that position’s duties have been redistributed to other staff.

E. 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 decrease in staff 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. Any reduction in staff would likely result in a permanent reduction in productivity. Additionally, staff turnover, as the Commission has experienced over the last fiscal year, results in a temporary reduction in productivity.

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

Commission decisions 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 and administrative tasks draws staff time away from matters pending before the Commission.

G. Other Pending Work Contributes to the Test Claim Backlog

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

H. Unique Issues Related to IRCs Which May Contribute to the Backlog

The filing of an IRC is an appeal of the Controller's reduction of a reimbursement claim. The number and complexity of the filings, number, classification, and level of positions, and other pending matters all factor in the time that it takes to complete IRCs. 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. Finally, though it may appear at times that work on IRCs is delaying work on test claims, these relatively simpler matters must be assigned to newer staff who are learning mandates, so that they can learn and to more experienced staff who have been working on voluminous and complex test claims to prevent burnout. Moreover, having some of these claims set for hearing helps to ensure that there are matters on the agenda for the Commission to hear and decide when the pending test claims get bogged down with complex legal and factual issues and requests for extensions and postponements from the parties.

I. 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 on an annual basis. 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 of the Commission's very small staff to prepare hearing materials for Commission members and the public and to coordinate the participation of the parties, which is time diverted from preparing matters for hearing. It is to prevent this disruption of the work of

preparing matters for hearing, that the use of the tentative hearing dates is avoided when possible.

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 or who are new to the Commission (as three of the four current staff attorneys are). 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’s auditors were consistent in making claim reductions based on similar findings of fact or law.

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 cross-cutting issues common to nearly all of the 72 then pending IRCs for that program. Then, Commission staff worked to ensure that the remaining *Investment Reports* IRCs were resolved informally through negotiations between claimants and the Controller’s staff.

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)s 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)s.

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.

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 informally. 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 December 2021. However, whether the IRCs will actually be heard by December 2021 depends on a variety of factors, discussed below, including pending litigation and whether new test claims, MRs, or PGAs 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, 12 IRCs in 2016-2017, eight IRCs in 2017-2018, and four IRCs in 2018-2019. 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. In 2017-2018, 2018-2019, and 2019-2020, zero IRCs were withdrawn.

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. In fiscal year 2017-2018, the last remaining *Health Fee Elimination* IRC was heard and decided by the Commission.

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 strategically selects some IRCs to be heard first where the issue is likely to recur. As stated above, all pending IRCs are tentatively set for hearing by December 2021. However, as new test claims, MRs, or PGAs 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. 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, and the IRC backlog has essentially been eliminated. This plan represents Commission staff's approach to reducing and ultimately eliminating the test claim 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, 2020. 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 from July 1, 2013 to July 1, 2020

| # | 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, Set, or Tentatively Set for Hearing | 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 ⁴¹ | 40 | 63 | 0 | 0 | 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 | 119 | 1/22/16 | 3/25/16 | 1/27/17 |
| 4. | Local Agency Employee Organizations: | 15-TC-01 | 6/2/16 | 0 | 0 | 23 | 0 | 1/27/17 | Test Claim Denied | Test Claim Denied |

⁴¹ 14-TC-01 and 14-TC-04 were consolidated for hearing on August 14, 2015 which restarts the statutory clock for adopting an SCE. (2 CCR 1183.18(a)(7).)

| # | 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, Set, or Tentatively Set for Hearing | Date SCE Set, or Tentatively Set for Hearing |
|----|---|---------------|------------|------------------------------|----------------------------------|-----------------------------------|---------------------------------------|--------------------------|---|--|
| | Impasse Procedures | | | | | | | | | |
| 5. | Certificated School Employees: Parental Leave | 16-TC-01 | 12/21/16 | 0 | 0 | 0 | 0 | 9/22/17 | Test Claim Denied | Test Claim Denied |
| 6. | Cal Grant: Grade Point Average and Graduation Certification | 16-TC-02 | 6/26/17 | 30 | 0 | 0 | 0 | 1/26/18 | 5/25/18 | 3/22/19 |
| 7. | Local Agency Employee Organizations: Impasse Procedures II | 16-TC-04 | 5/12/17 | 0 | 0 | 0 | 0 | 5/25/18 | 9/28/18 | 7/26/19 |
| 8. | U Visa 918 Form, Victims of Crime: Nonimmigrant Status | 17-TC-01 | 3/6/18 | 0 | 0 | 14 | 0 | 9/28/18 | 1/25/19 | 11/22/19 |
| 9. | Central Basin Municipal Water District | 17-TC-02 | 9/20/17 | 0 | 0 | 0 | 56 | 3/22/19 | Test Claim Denied | Test Claim Denied |

| # | 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, Set, or Tentatively Set for Hearing | Date SCE Set, or Tentatively Set for Hearing |
|-----|---|---------------|------------|------------------------------|----------------------------------|-----------------------------------|---------------------------------------|--------------------------|---|--|
| | Governance Reform | | | | | | | | | |
| 10. | Lead Sampling in Schools: Public Water System No. 3710020 | 17-TC-03 | 1/11/18 | 91 | 56 | 56 | 0 | 3/22/19 | Test Claim Denied | Test Claim Denied |
| 11. | Peace Officer Training: Mental Health/Crisis Intervention | 17-TC-06 | 5/10/18 | 0 | 0 | 0 | 0 | 5/24/19 | 9/27/19 | 7/24/20 |
| 12. | Youth Offender Parole Hearings | 17-TC-29 | 6/29/18 | 33 | 0 | 30 | 126 | 9/27/19 | Test Claim Denied | Test Claim Denied |
| 13. | Public School Restrooms: Feminine Hygiene Products | 18-TC-01 | 12/7/18 | 0 | 0 | 0 | 56 | 5/24/19 | 11/22/19 | Tentatively Set for December 2020 |
| 14. | Racial and Identity Profiling | 18-TC-02 | 6/14/19 | 0 | 0 | 0 | 0 | 5/22/20 | Tentatively Set for 9/25/20 | Tentatively Set for July 2021 |

| # | 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, Set, or Tentatively Set for Hearing | Date SCE Set, or Tentatively Set for Hearing |
|-----|---------------------------------------|---------------|------------|------------------------------|----------------------------------|-----------------------------------|---------------------------------------|--------------------------|---|--|
| 15. | Vote by Mail Ballots: Prepaid Postage | 19-TC-01 | 10/15/2019 | 0 | 0 | 0 | 0 | Set for 7/24/20 | Tentatively Set for 9/25/2020 | Tentatively Set for July 2021 |

Exhibits – Pending Workload

B. Test Claims as of July 1, 2020

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----|---------------|-----------|---|--|------------------------|
| 1. | 19-TC-01 | 10/15/19 | County of Los Angeles | <i>Vote by Mail Ballots: Prepaid Postage</i> | 7/24/20 |
| 2. | 19-TC-03 | 3/19/20 | San Diego Association of Government (SANDAG) | <i>SANDAG: Independent Performance Auditor</i> | 9/25/20 |
| 3. | 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, and Villa Park | <i>California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030</i> | 12/4/20 |
| 4. | 19-TC-02 | 12/31/19 | County of Los Angeles | <i>Accomplice Liability for Felony Murder</i> | 12/4/20 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|---|------------------|---|--|-------------------------------|
| 5. | 10-TC-02, (Consolidated with 10-TC-03, and 10-TC-05) | 10/13/10 | City of Dublin | <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 vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i> | 1/22/21 |
| 6. | 10-TC-03, (Consolidated with 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 vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i> | 1/22/21 |
| 7. | 10-TC-05, (Consolidated with 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 vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f</i> | 1/22/21 |
| 8. | 10-TC-07 | 1/31/11 | County of Riverside, Riverside County Flood Control and Water Conservation District, and 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> | 1/22/21 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|----------------------|------------------|--|--|-------------------------------|
| 9. | 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> | 1/22/21 |
| 10. | 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> | 1/22/21 |
| 11. | 10-TC-10 | 6/30/11 | County of San Bernardino, San Bernardino County Flood Control District, and Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland, Montclair, Ontario, and Rancho Cucamonga | <i>California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0036</i> | 5/28/21 |
| 12. | 11-TC-03 | 11/10/11 | County of Riverside, Riverside County Flood Control and 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> | 5/28/21 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|--|------------------|---|---|-------------------------------|
| 13. | 13-TC-01 (Consolidated with 13-TC-02) | 6/30/14 | Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, 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>California Regional Water Quality Control Board Los Angeles Region, Order No. R4-2012-0175</i> | 5/28/21 |
| 14. | 13-TC-02 (Consolidated with 13-TC-01) | 6/30/14 | County of Los Angeles and Los Angeles County Flood Control District | <i>California Regional Water Quality Control Board Los Angeles Region, Order No. R4-2012-0175</i> | 5/28/21 |
| 15. | 16-TC-03 | 6/30/17 | City of Union City | <i>California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2015-0049</i> | 5/28/21 |
| 16. | 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> | 9/24/21 |
| 17. | 17-TC-04 | 4/12/18 | Santa Clara Valley Water District | <i>Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, San Francisco Bay Region, Order No.</i> | 9/24/21 |
| 18. | 17-TC-07 | 5/31/18 | City of Brea | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Brea, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 9/24/21 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|----------------------|------------------|---|--|-------------------------------|
| 19. | 17-TC-08 | 5/30/18 | City of Cypress | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Cypress, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 12/3/21 |
| 20. | 17-TC-09 | 5/31/18 | City of Huntington Beach | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Huntington Beach, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 12/3/21 |
| 21. | 15-TC-02 | 6/30/16 | County of Orange, Orange County Flood Control District, and 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>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2015-0001, Provisions A.2, A.3.b, A.4, B, E.3.c(2), E.3.d, E.5, E.5.e, E.6., F, and Attachment E; and Order No. R9-2015-0100, Provision B.3.c</i> | 1/28/22 |
| 22. | 17-TC-10 | 5/31/18 | City of Newport Beach | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Newport Beach, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 1/28/22 |
| 23. | 17-TC-11 | 5/31/18 | City of Orange | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Orange, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 1/28/22 |
| 24. | 17-TC-12 | 5/31/18 | City of Seal Beach | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Seal Beach, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 3/25/22 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|----------------------|------------------|---|---|-------------------------------|
| 25. | 17-TC-13 | 6/1/18 | City of Anaheim | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Anaheim, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 3/25/22 |
| 26. | 17-TC-05 | 5/30/18 | City of San Juan Capistrano and County of San Diego | <i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2017-0077, Sections A.1, A.3, and A.5</i> | 5/27/22 |
| 27. | 17-TC-14 | 6/1/18 | City of Chino Hills | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Chino Hills, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 5/27/22 |
| 28. | 17-TC-15 | 6/1/18 | City of Costa Mesa | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Costa Mesa, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 5/27/22 |
| 29. | 17-TC-16 | 6/1/18 | City of Garden Grove | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Garden Grove, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 7/22/22 |
| 30. | 17-TC-17 | 6/1/18 | City of Laguna Woods | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Laguna Woods, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 7/22/22 |
| 31. | 16-TC-05 | 6/30/17 | County of Riverside, Riverside County Flood Control and Water Conservation District, and Cities of Murrieta, Temecula, and Wildomar | <i>California Regional Water Quality Control Board, San Diego Region, Order No. R9-2015-0100, Provisions A.4, B.2, B.3.a , B.3.b, B.4, B.5, B.6, D.1.c(6), D.2.a(2), D.3, D.4, E.3.c(2), E.3.c(3), E.3.d, E.5.a, E.5.c(1)a, E.5.c(2)a, E.5.c(3), E.5.e, E.6, F.1.a, F.1.b, F.2.a, F.2.b, F.2.c, F.3.b(3), and F.3.c</i> | 9/23/22 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|----------|----------------------|------------------|-----------------------|--|-------------------------------|
| 32. | 17-TC-18 | 6/1/18 | City of Lake Forest | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Lake Forest, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 9/23/22 |
| 33. | 17-TC-19 | 6/1/18 | City of San Jacinto | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of San Jacinto, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 9/23/22 |
| 34. | 17-TC-20 | 6/1/18 | City of Santa Ana | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Santa Ana, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 12/2/22 |
| 35. | 17-TC-21 | 6/1/18 | City of Tustin | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Tustin, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 12/2/22 |
| 36. | 17-TC-22 | 6/1/18 | City of Villa Park | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Villa Park, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 1/27/23 |
| 37. | 17-TC-23 | 6/1/18 | City of Yorba Linda | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Yorba Linda, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 1/27/23 |
| 38. | 17-TC-24 | 6/1/18 | County of Orange | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to County of Orange, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 3/24/23 |
| 39. | 17-TC-25 | 6/1/18 | City of Grand Terrace | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Grand Terrace, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 3/24/23 |

| # | Matter Number | File Date | Claimant | Name of Claim | Tentative Hearing Date |
|-----|---------------|-----------|-------------------|--|------------------------|
| 40. | 17-TC-26 | 6/1/18 | City of Irvine | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Irvine, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 5/26/23 |
| 41. | 17-TC-27 | 6/1/18 | City of Placentia | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Placentia, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 5/26/23 |
| 42. | 17-TC-28 | 6/1/18 | City of Rialto | <i>Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Rialto, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017</i> | 7/28/23 |

C. Parameters and Guidelines as of July 1, 2020

| # | Matter Number | Date Test Claim Filed | Date Test Claim Decision Adopted | Claimant | Program | Tentative Hearing Date |
|----|---------------|-----------------------|----------------------------------|---------------------|--|-------------------------------|
| 1. | 18-TC-02 | 6/14/19 | 5/22/20 | City of San Diego | <i>Racial and Identity Profiling</i> | 9/25/20 |
| 2. | 07-TC-09 | 6/30/08 | 3/26/10 | County of San Diego | <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 | Inactive pending court action |

D. Statewide Cost Estimates as of July 1, 2020

| # | Matter Number | Date Test Claim Filed | Date Test Claim Decision Adopted | Date Decision and Ps&Gs Adopted | Date Claims Due from Controller ⁴² | Claimant/Requester | Program | Tentative Hearing Date |
|----|--|--------------------------|----------------------------------|---------------------------------|---|--|--|-------------------------------|
| 1. | 17-TC-06 | 5/10/18 | 5/24/19 | 9/27/19 | 5/25/20 | Cities of Claremont and South Lake Tahoe | <i>Local Agency Employee Organizations: Impasse Procedures II</i> | 7/24/20 |
| 2. | 18-TC-01 | 12/7/18 | 5/24/19 | 11/22/19 | 6/19/20 | Desert Sands Unified School District | <i>Public School Restrooms: Feminine Hygiene Products</i> | 12/04/20 |
| 3. | 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 court action |

⁴² Estimated date based on the issuance or expected issuance of Controller’s claiming instructions.

E. Incorrect Reduction Claims as of July 1, 2020

| # | Matter Number | Filing Date | Claimant | Fiscal Year | Name | Type | Tentative Hearing Date |
|----------|----------------------|--------------------|--|---|---|--------------|-------------------------------|
| 1. | 17-9811-I-04 | 8/1/17 | Town of Apple Valley | 2007-2008, 2008-2009 | <i>Animal Adoption</i> | Local Agency | 7/24/20 |
| 2. | 17-0130-I-01 | 8/15/17 | City of Monrovia | 2010-2011 | <i>Local Government Employee Relations</i> | Local Agency | 9/25/20 |
| 3. | 17-0240-I-01 | 8/22/17 | City of San Marcos | 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 | <i>Crime Statistics Reports for the Department of Justice (DOJ)</i> | Local Agency | 12/4/20 |
| 4. | 18-0304-I-01 | 8/17/18 | City of Bellflower | 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 | <i>Municipal Storm Water and Urban Runoff Discharges</i> | Local Agency | 1/22/21 |
| 5. | 19-9825-I-03 | 3/2/20 | Fairfield-Suisun Unified School District | 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013 | <i>The Stull Act</i> | K-14 | 3/26/21 |

| # | Matter Number | Filing Date | Claimant | Fiscal Year | Name | Type | Tentative Hearing Date |
|----|---------------|-------------|-----------------|---|---|--------------|------------------------|
| 6. | 19-0304-I-02 | 5/22/20 | City of Norwalk | 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 | <i>Municipal Storm Water and Urban Runoff Discharges</i> | Local Agency | 5/28/21 |
| 7. | 19-0304-I-03 | 6/8/20 | City of Arcadia | 2002-2003, 2003- 2004, 2004-2005, 2005-2006, 2006- 2007, 2007-2008, 2008-2009 | <i>Municipal Storm Water and Urban Runoff Discharges</i> | Local Agency | 7/23/21 |
| 8. | 19-0304-I-04 | 6/30/20 | City of Downey | 2002-2003, 2003- 2004, 2004-2005, 2005-2006 | <i>Municipal Storm Water and Urban Runoff Discharges</i> | Local Agency | 9/24/21 |

| # | Matter Number | Filing Date | Claimant | Fiscal Year | Name | Type | Tentative Hearing Date |
|----|---------------|-------------|-------------------|---|--|--------------|------------------------|
| 9. | 19-0304-I-05 | 6/10/20 | City of La Puente | 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 | <i>Municipal Storm Water and Urban Runoff Discharges</i> | Local Agency | 12/3/21 |

F. Parameters and Guidelines Amendments as of July 1, 2020

| # | 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 pending court action |