STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

# REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

## January 1, 2019 – December 31, 2019



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## INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.[1]

This report includes a summary of the three test claims that the Commission denied during the period from January 1, 2019 through December 31, 2019. The complete text of the decisions for the denied claims may be found on the Commission's website at https://www.csm.ca.gov/denied_mandates.php.

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1187.11.

[1] Government Code section 17601.

**SUMMARY OF DENIED CLAIMS**

## *Central Basin Municipal Water District Governance Reform*

17-TC-02

Water Code Sections 71265, 71266, and 71267

Statutes 2016, Chapter 401 (AB 1794)

Central Basin Municipal Water District, Claimant

Test Claim Filed: September 20, 2017

Decision Adopted: March 22, 2019

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This Test Claim alleges reimbursable state-mandated activities and costs arising from Statutes 2016, chapter 401, which added sections 71265, 71266, and 71267 to the Water Code, effective January 1, 2017. The test claim statute requires the Central Basin Municipal Water District (claimant) to expand its board of directors from its current five members (also known as directors) to eight members, until the election of November 8, 2022, after which the board would be composed of seven members. The claimant's general manager is also required to notify the district's water purveyors (purveyors) and provide a 60-day period during which the purveyors may nominate individuals for appointment to the board. In addition, the statute establishes minimum qualifications for appointed board members and limits benefits provided to the board members. The goal of the test claim statute is to protect consumers and "improve the District's effectiveness as a water wholesaler by enhancing the technical knowledge of the Board and by encouraging the participation of the water retailers that are responsible for water delivery directly to the customers."[2] The claimant seeks reimbursement for the costs of the appointment process for the additional board members, capital improvements to its facilities, and increased overhead costs due to the required expansion of the governing board.

Prior to the enactment of the test claim statute, the claimant had been under increased scrutiny as news reports highlighted its misuse of public funds, inappropriate contracting and employment practices, and several pending lawsuits. The Bureau of State Audits proceeded to review various aspects of the claimant's operations between July 2010 and June 2015, and in December 2015, issued an audit report recommending special legislation to modify the claimant's governance structure so as to ensure the claimant's accountability to its customers.

This Test Claim was timely filed, pursuant to Government Code section 17551, on September 20, 2017 which is within 12 months of the January 1, 2017 effective date of the test claim statute.

To be eligible for reimbursement under article XIII B, section 6, a local agency must be subject to the taxing and spending limitations of articles XIII A and XIII B of the California Constitution. In this case, reimbursement is not required under article XIII B, section 6, however, because there is no evidence that the claimant receives any proceeds of taxes subject to the appropriations limit of article XIII B and, therefore, is not eligible to claim mandate reimbursement under section 6. Article XIII B, section 9(c) specifically provides that special districts that existed in 1977-78 and did not share in ad valorem property taxes, or were created

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[2] Exhibit G, AB 1794 – Assembly Bill - Bill Analysis, August 19, 2016, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB1794, accessed October 31, 2018, page 5.

later and are funded entirely by "other than the proceeds of taxes", which precisely describes the claimant, are not subject to the appropriations limit.

Although the claimant is theoretically able to impose special taxes pursuant to Article XIII C, section 2(a) of the California Constitution and certain provisions in the Municipal Water Act of 1911, there is no evidence in the record that it has ever done so. In fact, all evidence in the record indicates that the claimant's revenues derive solely from its authority to collect fees and assessments and grants.[3] Moreover, Proposition 218 does not convert claimant's fees, assessments, or charges into "proceeds of taxes" subject to the appropriations limit of article XIII B, section 8, nor do expenditures of fees imposed pursuant to Proposition 218 trigger the reimbursement requirements of article XIII B, section 6 as appropriations of such fees are not "appropriations subject to limitation." Therefore, there is no substantial evidence in the record to support a finding the claimant has eligibility for subvention of funds within the meaning of article XIII B, section 6.

Accordingly, based on this record, the Commission denies this Test Claim.

[3] Exhibit G, Bureau of State Audits (BSA) Audit Report 2015-102 (Dec. 2015), "Central Basin Municipal Water District – Its Board of Directors Has Failed to Provide the Leadership Necessary for It to Effectively Fulfill its Responsibilities," https://www.auditor.ca.gov/pdfs/reports/2015-102.pdf, accessed October 8, 2018, pages 19-20; Exhibit G, Central Basin Municipal Water District Adopted Operating Budget & Capital Improvement Projects/Grant Projects Budget, Fiscal Year 2016-17 (July 2016), https://forms.centralbasin.org/sites/default/files/finance/Adopted%20Budget%20for%20FY%202016-17_FINAL_0.pdf, accessed December 14, 2018, pages 10-13.

## *Lead Sampling in Schools: Public Water System 3710020*

17-TC-03

Permit Amendment No. 2017PA-SCHOOLS,
City of San Diego Public Water System
No. 3710020, effective January 18, 2017

City of San Diego, Claimant

Test Claim Filed: January 11, 2018

Decision Adopted: March 22, 2019

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This Test Claim alleges new state-mandated activities and costs arising from an amendment to the City of San Diego's (claimant's) public water system (PWS) permit adopted by the State Water Resources Control Board (SWRCB), Order No. 2017PA-SCHOOLS. The test claim order requires the claimant, as the operator of a "public water system"[4] that serves a number of K-12 schools, to perform lead sampling, upon request from a school it serves. A PWS may be a private company or a governmental entity.[5] Specifically, a PWS is defined as "a system for the provision *to the public* of water for human consumption" that has at least 15 service connections and serves at least 25 people per day for at least 60 days out of the year.[6] Under the order, upon request from a school, the PWS must take samples at one to five fixtures (e.g., drinking fountains or food preparation areas) on the school's property, process those results with a certified laboratory, maintain records of the requests and the results, and provide the results, and if necessary, information to the school regarding possible remediation or other solutions if lead is detected in the fixtures above 15 parts per billion (ppb).

The Commission finds that the Test Claim is timely filed.

The Commission further finds that the activities required by the order are new, as compared against prior state and federal law. However, the requirements of the test claim order do not impose a new program or higher level of service, within the meaning of article XIII B, section 6. The requirements are not uniquely imposed on local government, because the test claim order is one of over 1,100 PWS permits amended simultaneously with identical requirements,

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[4] These systems are also known as "community water systems" which are PWSs that supply water to the same population year-round. (See Health and Safety Code section 116275(i).) The reader may find these two terms used interchangeably in some of the supporting documentation in the record.

[5] 42 United States Code, section 300f(4): "The term "public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." (Emphasis added.) Also, "the term "supplier of water" means any person who owns or operates a public water system." (42 United States Code, section 300f(5).) Further, "the term "person" means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency)." (42 United States Code, section 300f(12).) California law is consistent: '"Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year." (Health and Safety Code 116275(h).)

[6] Health and Safety Code section 116275(h).

approximately 450 of which were issued to privately-owned and operated drinking water suppliers. Moreover, water service is not a *governmental* function of providing services to the public because providing water service is not required by state or federal law and is not a core function of government. The test claim order here relates to the provision of drinking water through a PWS, which is fundamentally distinct from the essential and peculiarly governmental functions determined by the courts: providing water service for a fee – traditionally a proprietary function – to ratepayers is far different from a city or county providing police or fire protection, or school districts providing a free and appropriate public education, to all residents of the jurisdiction regardless of their ability to pay. For these reasons, the Commission finds that the test claim order does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, and denies this Test Claim.

## *Youth Offender Parole Hearings*

17-TC-29

Penal Code Sections 3041, 3046, 3051, and 4801

Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)

County of San Diego, Claimant

Test Claim Filed: June 29, 2018

Decision Adopted: September 27, 2019

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The test claim statutes require, with specified exceptions, that the state Board of Parole Hearings (BPH) conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), to review the suitability for parole during the 15th, 20th, or 25th year of incarceration of any prisoner who was 25 or younger at the time of their controlling offense and was sentenced to 15 years or more, or who was sentenced to life in prison without the possibility of parole (LWOP) for an offense committed when the offender was under 18. At the YOPH, the BPH is required to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."[7] Youthful offenders "found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 shall be paroled regardless of the manner in which the board set release dates . . . ."[8]

The test claim statutes were enacted primarily in response to U.S. and California Supreme Court cases, which found that the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment, is violated when a juvenile offender commits a crime before reaching the age of 18 and receives a sentence of death, mandatory LWOP, or an equivalent mandatory sentence. The courts held that a state must instead provide these juvenile offenders, at sentencing, "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[9]

The Commission finds that this Test Claim was timely filed.

The Commission further finds, and the claimant agrees,[10] that the plain language of the test claim statutes does not impose any state-mandated activities on local agencies. All duties imposed by the test claim statutes are assigned to the BPH – a state agency. In addition, it is the BPH that is required to provide state-appointed counsel to inmates at YOPHs – not the local agency.[11]

The claimant, however, seeks reimbursement for costs associated with district attorneys and public defenders presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review before the BPH,

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[7] Penal Code sections 4801(c).

[8] Penal Code section 3046(c).

[9] *Miller v. Alabama* (2012) 567 U.S. 460, 479; *People v. Caballero* (2012) 55 Cal.4th 262, 268-269.

[10] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 2; Exhibit H, Claimant's Comments on the Proposed Decision, page 1.

[11] Penal Code section 3041.7; California Code of Regulations, title 15, section 2256(c).

pursuant to the California Supreme Court's decisions in *People v. Franklin* and *In re Cook*.[12] In *Franklin*, the court found that a juvenile offender, at sentencing, must have sufficient opportunity that he or she "may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors."[13] In addition, *Cook* found that the *Franklin* proceedings apply to offenders who are entitled to a YOPH, and whose judgment and sentence are already final.[14] The court in *Cook* explained that youthful offenders who are currently incarcerated and want to receive a *Franklin* proceeding can file a motion with the superior court under Penal Code section 1203.01, using the original caption and case number and citing the Supreme Court's decision in *Cook*.[15]

The Commission finds that the test claim statutes, including the resultant *Franklin* proceedings, do not impose a state-mandated program on local agencies. Article XIII B, section 6 requires reimbursement only for mandates imposed by the Legislature or any state agency. And, in this case, the court in *Cook* noted that the Legislature has *not* enacted any laws to specify what evidence-gathering procedures should be afforded to youth offenders who will be eligible for a YOPH, and explained that the Legislature still remains free to enact statutes governing the procedure.[16]

Even if a court were to agree with the claimant that the test claim statutes mandated activities with regard to the *Franklin* proceedings, the test claim statutes changed the penalty for crimes committed by all YOPH eligible offenders and, thus, the test claim statutes, including the resultant *Franklin* proceedings, do not impose "costs mandated by the state" pursuant to Government Code section 17556(g). Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or *changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction*."

Incarceration and parole are part of the penalty for the underlying crime.[17] Under the test claim statutes, some youthful offenders have received a reduction (sometimes by decades) in the minimum number of years of incarceration they must serve before becoming eligible for parole, and other such offenders who were ineligible for parole are now eligible. Thus, as stated in *Franklin*, the test claim statutes, by operation of law, "superseded the statutorily mandated

[12] *People v. Franklin* (2016) 63 Cal.4th 261; *In re Cook* (2019) 7 Cal.5th 439.

[13] *People v. Franklin* (2016) 63 Cal.4th 261, 286.

[14] *In re Cook* (2019) 7 Cal.5th 439, 447-552.

[15] *In re Cook* (2019) 7 Cal.5th 439, 457.

[16] *In re Cook* (2019) 7 Cal.5th 439, 459; see also, *People v. Franklin* (2016) 63 Cal.4th 261, 286, where the court noted that BPH had not yet adopted regulations applicable to a YOPH.

[17] *People v. Nuckles* (2013) 56 Cal.4th 601, 608 ("These competing arguments focus on the nature of parole and whether it constitutes part of the punishment for the underlying crime. It does."), and 610 ("The restraints on liberty and constructive custody status further demonstrate that service of parole is part of the punishment imposed following a defendant's conviction.")

sentences"[18] by capping the number of years the offender may be imprisoned before becoming eligible for release on parole:

> [S]ection 3051 has changed the manner in which the juvenile offender's original sentence operates by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole. The Legislature has effected this change by operation of law, with no additional resentencing procedure required.[19]

This reasoning is further confirmed by subsequent appellate court decisions interpreting *Franklin*, one of which holds that the test claim statute "has in effect abolished de facto life sentences" for juvenile offenders:

> Section 3051 specifically and sufficiently addresses these concerns regarding cruel and unusual punishment. *This is because section 3051 has in effect abolished de facto life sentences in California.* Section 3051 universally provides each juvenile offender convicted as an adult with a mandatory parole eligibility hearing on a legislatively specified schedule, and after no more than 25 years in prison. When the Legislature enacted section 3051, it followed precisely the urging of the *Caballero* court to provide this parole eligibility mechanism.[20]

Thus, the test claim statutes changed the penalty for crimes committed by all YOPH eligible offenders by capping the number of years the offender may be imprisoned before becoming eligible for release on parole, and all of the activities alleged in this case to comply with the test claim statutes, including the resultant *Franklin* proceedings, relate directly to the enforcement of the youthful offender's underlying crime. Therefore, there are no costs mandated by the state pursuant to Government Code section 17556(g).

Accordingly, the Commission denies this Test Claim.

[18] *People v. Franklin* (2016) 63 Cal.4th 261, 278.

[19] *People v. Franklin* (2016) 63 Cal.4th 261, 279.

[20] *People v. Garcia* (2017) 7 Cal.App.5th 941, 950 (emphasis added).