

ITEM 6

ORDER TO SET ASIDE ORDER DENYING APPEAL OF EXECUTIVE DIRECTOR'S DECISION TO RETURN TEST CLAIM

(Pursuant to Peremptory Writ of Mandate Issued by the
Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed
in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)

California Regional Water Quality Control Board
Executive Order Number 01-182 (December 13, 2001),
Permit Number CAS004001, Parts 1 & 2, Pages 16-18; Part 4C & E, Pages 27-34 and
42-45; and Part 4F(5) & (6), Pages 48-51

Stormwater Pollution Control Requirements
(03-TC-21)

Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico
Rivera, Signal Hill, South Pasadena, and West Covina, Claimants

Executive Summary

Background

This item is on remand from the Los Angeles County Superior Court and involves a test claim filed on September 30, 2003, by the above-named cities, alleging that a permit issued by the California Regional Water Quality Control Board, Los Angeles Region, constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. On October 15, 2003, the Executive Director returned the filing to the cities based on Government Code section 17516. Government Code section 17516 states that "executive orders" subject to article XIII B, section 6 "[do] not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board ..." The cities appealed the Executive Director's decision to return the filing to the Commission and on March 25, 2004, the Commission denied the cities' appeal. On March 26, 2004, an order denying the appeal of the Executive Director's decision was issued.

The cities filed a lawsuit challenging the Commission's decision denying the appeal on the ground that Government Code section 17516 was unconstitutional. On May 10, 2007, the Second District Court of Appeal issued its decision affirming the judgment and peremptory writ of mandate issued by the Los Angeles County Superior Court, finding that Government Code section 17516 "is unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of 'executive orders' for which subvention of funds to local governments for carrying out state mandates is required pursuant to article XIII B, section 6." (*County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 921.)

Thus, the Commission is now directed by the peremptory writ of mandate to:

- (a) set aside the decisions dated March 26, 2004, affirming the Executive Director's rejection and return of Test Claim Nos. 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21; and
- (b) fully consider these test claims in light of the court's judgment and determine whether the claimants are entitled to reimbursement. In doing so, the Commission shall not apply that portion of Government Code section 17516 that states, "'Executive order' does not include any order, plan, requirement, rule or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code." (See Exhibit A, Peremptory Writ of Mandate.)

Exhibit B contains the proposed order to set aside the order dated March 26, 2004, denying the appeal of the Executive Director's decision to return the test claim. Once the proposed order is adopted and issued, and the claimants re-file the original test claim, the test claim will proceed under the procedures established in Government Code section 17500 et seq. and the Commission's regulations (Cal. Code Regs., tit. 2, §§ 1181 et seq.) for a hearing and determination on the merits of the claim. The original September 30, 2003 filing date of the test claim will be preserved.

Staff Recommendation

Staff recommends that the Commission adopt the order in Exhibit B to set aside the order dated March 26, 2004, denying the appeal of the Executive Director's decision to return the *Stormwater Pollution Control Requirements* test claim (03-TC-21).