



January 8, 2025

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Raymond Palmucci
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Proposed Order to Set Aside the Test Claim Decision on Remand Adopted December 1, 2023 Pursuant to Court's Judgement, Order, and Writ

Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R
Pursuant to the judgement, order, and writ issued October 31, 2024 in *City of San Diego v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 24WM000056; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017
City of San Diego, Claimant

Dear Mr. Hill and Mr. Palmucci:

The Proposed Order for the above-captioned matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, January 24, 2025, in person at 10:00 a.m., at Park Tower, 980 9th Street, Suite 300, Sacramento, California, 95814 and via Zoom.**

The Commission is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters whether they are physically appearing at the in-person meeting location or participating via Zoom. If you want to speak during the hearing and you are in-person, please come to the table for the swearing in and to speak when your item is up for hearing. If you are participating via Zoom, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted.

You may join the meeting via Zoom through the link below and can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well.

There are two options for joining the meeting via Zoom:

1. Through the link below you can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well. **(You are encouraged to use this option.)**

<https://csm-ca-gov.zoom.us/j/83967963319?pwd=RZM2bHxZg6kk99n4ciHhaVyHMn7sK7.1>

Passcode: 012425

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2. Through your landline, smart mobile, or non-smart mobile phone, either number works. You will be able to listen to the proceedings but will not be able to view the meeting or any documents being shared.

+1 216 706 7075 US Toll

+1 866 390 1828 US Toll-free

Conference code: 155007

Please don't hesitate to reach out to us for help with technical problems at csminfo@csm.ca.gov or 916 323-3562.

This matter is proposed for the Consent Calendar. Please let us know in advance if you oppose having this item placed on consent and wish to testify at the hearing or have a representative testify on your behalf, and if other witnesses will appear.

In that case, please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.


If you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible. However, comments filed less than five days prior to a meeting will not be included in the Commissioners' hearing binders and a PDF of the document shall be filed via the Commission's dropbox at <https://www.csm.ca.gov/dropbox.shtml> at least 24-hours prior to the hearing to allow staff time to process and post the document to allow all in-person and remote participants to review it. Commission staff shall provide an electronic copy to the Commission, include an electronic copy in the public hearing binder at the hearing, and post a copy on the Commission's website, and may share the document with the Commission and the public using the "share screen" function. (Cal. Code Regs., tit. 2, § 1181.10(b)(1)(C)).

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Very truly yours,



Juliana F. Gmur
Executive Director

Hearing Date: January 24, 2025

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Aside\Proposed Order.docx

ITEM 4
PROPOSED ORDER
TO SET ASIDE THE TEST CLAIM DECISION ON REMAND ADOPTED
DECEMBER 1, 2023 PURSUANT TO COURT'S JUDGMENT, ORDER,
AND WRIT

Pursuant to the judgment, order, and writ issued October 31, 2024, in
City of San Diego v. Commission on State Mandates,
Sacramento County Superior Court, Case No. 24WM000056

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

Lead Sampling in Schools: Public Water System No. 3710020

17-TC-03-R

City of San Diego, Claimant

EXECUTIVE SUMMARY

On October 31, 2024, the Sacramento County Superior Court issued a judgment and order granting a petition for writ of mandate and entered a peremptory writ of mandate directing the Commission to set aside its December 1, 2023, Decision that found the City of San Diego is not mandated by the state to comply with the test claim permit amendment.¹ The court disagreed with the Commission's findings on practical compulsion and ruled that the City of San Diego is practically compelled and, thus, mandated by the state to comply with the permit amendment as follows:

The bottom line is the City will incur costs to comply with the new lead testing requirement, and it has no reasonable alternative to continuing its water service operations in compliance with its permit. Simply ceasing water service is not a reasonable alternative given the critical importance of water service. Continuing to operate while ignoring the permit condition and hoping for no enforcement action from the Board, or continuing to operate despite a permit revocation, are not reasonable alternatives either. Selling the water system, as established by the City's uncontroverted evidence, is not a viable alternative under these

¹ Exhibit A, Test Claim Decision, adopted December 1, 2023; Exhibit B, Judgment Granting Petition for Writ of Administrative Mandate; Exhibit C, Order Granting Petition for Writ of Administrative Mandate; and Exhibit D, Peremptory Writ of Mandate.

circumstances. The City is, therefore, practically compelled to comply with the new permit condition, and the Commission erred in finding otherwise.²

The court's writ directs the Commission to do the following:

Judgment having been entered in this Court, Respondent Commission on State Mandates is commanded to set aside its December 1, 2023 decision denying Test Claim 17-TC-03-R on the basis that the permit condition is not a mandate as to the City is vacated, and to determine any outstanding issues, consistent with the Ruling on the Submitted Matter — Petition for Writ of Mandate filed October 11, 2024 (attached at Exhibit A). The Commission on State Mandates shall make and file a return on the writ with this Court, within 60 days after issuance of the writ, setting forth what has been done to comply therewith.³

Once the Commission sets aside and vacates the Decision adopted December 1, 2023, on the basis that the permit condition is not a mandate, then the Commission will be required to determine any remaining issues required by article XIII B, section 6 of the California Constitution. In addition to the ruling by the Sacramento County Superior Court that the City of San Diego is practically compelled to comply with permit amendment, the Third District Court of Appeal previously determined that the permit amendment imposes a new program or higher level of service.⁴ Thus, the state mandate and new program or higher level of service issues have been resolved by the courts. In addition, the Commission previously determined the activities required by the test claim amendment, and that portion of the Decision was not challenged and remains binding. The only remaining issue to be decided by the Commission is whether the permit amendment imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code sections 17514 and 17556.

The remand of the Test Claim in light of the courts' decisions, and the determination of the last issue on costs mandated by the state is tentatively set for hearing on March 28, 2025. A Draft Proposed Decision was previously issued for comment on the issue of costs mandated by the state⁵ and the parties filed comments on that issue. Thus, a final Proposed Decision on this Test Claim will issue approximately two weeks before the March 28, 2025 hearing.

² Exhibit B, Judgment Granting Petition for Writ of Administrative Mandate, page 13.

³ Exhibit D, Peremptory Writ of Mandate, page 2.

⁴ Exhibit E, Unpublished Opinion Issued April 29, 2022, Third Appellate District, Case No. C092800.

⁵ Draft Proposed Decision, Schedule for Comments, and Notice of Hearing, issued March 23, 2023, <https://www.csm.ca.gov/matters/17-TC-03-R/doc1.pdf> (accessed on December 17, 2024).

Conclusion and Recommendation

Accordingly, pursuant to the Superior Court's judgment, order, and writ, staff recommends the Commission adopt the following order setting aside the Decision denying the Test Claim on *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03-R, adopted December 1, 2023, on the basis that the permit condition is not a state mandate.⁶

⁶ Exhibit A, Test Claim Decision, adopted December 1, 2023.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

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

Filed on January 11, 2018

City of San Diego, Claimant

Case No.: 17-TC-03-R

Lead Sampling in Schools: Public Water System No. 3710020

ORDER TO SET ASIDE THE TEST CLAIM DECISION ON REMAND ADOPTED DECEMBER 1, 2023

Pursuant to Judgment, Order, and Writ Issued in *City of San Diego v. Commission on State Mandates*, by the Sacramento County Superior Court, Case No. 24WM000056

(Adopted January 24, 2025)

**ORDER TO SET ASIDE THE TEST CLAIM DECISION ON REMAND
ADOPTED DECEMBER 1, 2023 PURSUANT TO COURT’S JUDGMENT,
ORDER, AND WRIT**

The Commission on State Mandates (Commission) adopted this Order during a regularly scheduled hearing on January 24, 2025.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Order to Set Aside the Test Claim Decision on Remand adopted December 1, 2023, pursuant to the court’s judgment, order, and writ by a vote of [vote will be included in the adopted Order], as follows:

Member	Vote
Lee Adams, County Supervisor	
Shannon Clark, Representative of the Director of the Office of Planning and Research	
Deborah Gallegos, Representative of the State Controller	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	

Member	Vote
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	

On October 31, 2024, the Sacramento County Superior Court issued a judgment and order granting a petition for writ of mandate and entered a peremptory writ directing the Commission to set aside its December 1, 2023, Decision that found the City of San Diego is not mandated by the state to comply with the test claim permit amendment.⁷ The court disagreed with the Commission’s findings on practical compulsion and ruled that the City of San Diego is practically compelled and, thus, mandated by the state to comply with the permit amendment as follows:

The bottom line is the City will incur costs to comply with the new lead testing requirement, and it has no reasonable alternative to continuing its water service operations in compliance with its permit. Simply ceasing water service is not a reasonable alternative given the critical importance of water service. Continuing to operate while ignoring the permit condition and hoping for no enforcement action from the Board, or continuing to operate despite a permit revocation, are not reasonable alternatives either. Selling the water system, as established by the City’s uncontroverted evidence, is not a viable alternative under these circumstances. The City is, therefore, practically compelled to comply with the new permit condition, and the Commission erred in finding otherwise.⁸

The court’s writ directs the Commission to do the following:

Judgment having been entered in this Court, Respondent Commission on State Mandates is commanded to set aside its December 1, 2023 decision denying Test Claim 17-TC-03-R on the basis that the permit condition is not a mandate as to the City is vacated, and to determine any outstanding issues, consistent with the Ruling on the Submitted Matter — Petition for Writ of Mandate filed October 11, 2024 (attached at Exhibit A). The Commission on State Mandates shall make and file a return on the writ with this Court, within 60 days after issuance of the writ, setting forth what has been done to comply therewith.⁹

In accordance with the Superior Court’s judgment, order, and writ of mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached Decision on the basis and to the extent that the permit condition is not a state mandate:

⁷ Exhibit A, Test Claim Decision, adopted December 1, 2023; Exhibit B, Judgment Granting Petition for Writ of Administrative Mandate; Exhibit C, Order Granting Petition for Writ of Administrative Mandate; and Exhibit D, Peremptory Writ of Mandate.

⁸ Exhibit B, Judgment Granting Petition for Writ of Administrative Mandate, page 13.

⁹ Exhibit D, Peremptory Writ of Mandate, page 2.

Test Claim Decision on *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03-R, adopted December 1, 2023.¹⁰

The remaining findings in the Decision adopted December 1, 2023, were not challenged or set aside by the court and, thus, remain binding.

Juliana F. Gmur, Executive Director

Date

¹⁰ Exhibit A, Test Claim Decision, adopted December 1, 2023.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

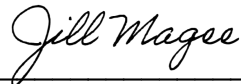
On January 8, 2025, I served the:

- **Current Mailing List dated January 8, 2025**
- **Proposed Order to Set Aside the Test Claim Decision on Remand Adopted December 1, 2023 Pursuant to Court's Judgement, Order, and Writ issued January 8, 2025**

Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R
Pursuant to the judgement, order, and writ issued October 31, 2024 in *City of San Diego v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 24WM000056; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017
City of San Diego, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 8, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/8/25

Claim Number: 17-TC-03-R

Matter: Lead Sampling in Schools: Public Water System No. 3710020

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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