ITEM 9

CHIEF LEGAL COUNSEL'S REPORT
New Filings, Recent Decisions, Litigation Calendar

This public session report is intended only as an information item for the public.[1] Commission communications with legal counsel about pending litigation or potential litigation are reserved for Closed Executive Session, per the Notice and Agenda.

New Filings

- *Fresno Unified School District v. Commission on State Mandates, Department of Finance*
  Sacramento County Superior Court, Case No. 34-2017-80002768
  (*Certificated School Employees – Parental Leave,* CSM 16-TC-01)

Recent Decisions

- December 19, 2017 Published Decision Issued by 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; California Regional Water Quality Control Board, San Diego Region Order No. R9-2007-001

  The Court of Appeal reversed the trial court decision, finding that the trial court used the wrong test for determining whether the required activities were mandated by the state. The Court applied the test recently adopted by the California Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 (which addressed the stormwater permit issued by the Los Angeles Regional Water Control Board). 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 that the 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 concluded 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 did not reach the new program or higher level of service and fee authority issues,

[1] Based on information available as of January 10, 2018. Release of this litigation report shall not be deemed to be a waiver of any privileged communication or act, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

and remanded the matter to the trial court to determine those issues.

Litigation Calendar

Cases	***Date of Hearing***
California School Boards Assoc., et al. v. State of California, Commission on Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance First District Court of Appeal, Case No. A148606 (Mandates process for K-12 school districts, redetermination statutes, budget trailer bills [Education Code sections 42238.24 and 56523])	December 14, 2017; Decision not yet issued
REMAND of *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, County of Los Angeles, et al.,* Los Angeles County Superior Court, Case No. BS130730 (on Remand from California Supreme Court, Case No. S214855, Second District Court of Appeal, Case No. B237153, *Municipal Storm Water and Urban Runoff Discharges,* 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21)	January 31, 2018
County of Los Angeles v. Commission on State Mandates, State Controller's Office Los Angeles County Superior Court, Case No. BS167447 *(Seriously Emotionally Disturbed Pupils (SEDS) IRC, 12-9705-I-04)*	April 3, 2018
County of Los Angeles v. Commission on State Mandates, State Controller's Office Los Angeles County Superior Court Consolidated Case Nos. BS166734, BS166735 (*Handicapped and Disabled Students I and II IRCs*, 13-4282-I-06, 12-0240-I-01)	April 25, 2018