



January 10, 2023

Mr. Kris Cook  
Department of Finance  
915 L Street, 10th 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 Adopted March 22, 2019  
Pursuant to Court's Judgement and Writ**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03*

Pursuant to the unpublished opinion issued April 29, 2022 in *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; 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. Cook 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 27, 2023**, at 10:00 a.m., via Zoom.

Statutes 2022, chapter 48 (Sec. 20 and 80), signed by Governor Newsom on June 30, 2022, amended the Bagley-Keene Open Meeting Act to extend until July 1, 2023, the authority to hold public meetings through teleconferencing and to make public meetings accessible electronically to all members of the public seeking to observe and to address the state body in order to protect the health and safety of civil servants and the public. The statute further suspends and no longer requires until July 1, 2023, the physical presence of members or other personnel of the state body or the public as a condition of participation in or quorum for a public meeting; the identification of each teleconference location from which a member will be participating; the posting of the notice and agenda at each teleconference location; and the ability of the public to address the state body at each teleconference location.

The Commission on State Mandates (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.

**If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial \*9 to use the "Raise Hand" feature.**

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.)**

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<https://csm-ca-gov.zoom.us/j/86084493581?pwd=eUVNclY1R1UydDFXVFFPMDJqSVO0QT09>

Passcode: 198134

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](mailto: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 or submitted at the meeting will not be included in the Commissioners' hearing binders. Due to the meeting being remote, in lieu of the commenter providing 12 paper copies of the comments at the meeting for such late filings (Cal. Code Regs., tit. 2, § 1181.10(b)(1)), please file the PDF document or section of the PDF document via the Commission's dropbox at <https://csm.ca.gov/dropbox.php> prior to the hearing.

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.

Sincerely,



Heather Halsey  
Executive Director

Hearing Date: January 27, 2023

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## ITEM 4

### PROPOSED ORDER

#### TO SET ASIDE THE TEST CLAIM DECISION ADOPTED MARCH 22, 2019 PURSUANT TO COURT'S JUDGMENT AND WRIT

Pursuant to the unpublished opinion issued April 29, 2022 in *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS

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

City of San Diego, Claimant

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#### EXECUTIVE SUMMARY

On April 29, 2022, the Third District Court of Appeal reversed the judgment issued by the Sacramento County Superior Court approving the Commission's denial of the above titled test claim, finding that the test claim order imposes a new program or higher level of service as follows:

On the City's appeal, we reverse. For reasons we will cover below, we conclude that the Water Board's new condition requires local governments to support "a new program" within the meaning of article XIII B, section 6. But because the City's showing that the Water Board's permit condition establishes a "new program" is a necessary, though not sufficient, showing for reimbursement, we stop short of holding that the state must reimburse the City for the costs of compliance. We leave it to the Commission to consider in the first instance whether reimbursement is appropriate on these facts following remand.<sup>1</sup>

The Court of Appeal directed the trial court to remand the matter to the Commission for further proceedings consistent with the Court's April 29, 2022 unpublished opinion.<sup>2</sup> On November 16, 2022, the superior court issued its judgment and writ, which was served on the Commission on December 1, 2022, directing the Commission as follows:

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<sup>1</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 2.

<sup>2</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 21.

Judgment having been entered by this court, Respondent Commission on State Mandates is commanded to set aside its March 22, 2019 decision denying the test claim in *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, and to consider in the first instance whether reimbursement is required, consistent with the Third District Court of Appeal’s Opinion filed April 29, 2022 (attached at Exhibit A). The Commission shall file a return on the writ with this court, within 120 days of service of the writ, indicating what they have done to comply with the writ.<sup>3</sup>

Setting aside the Commission’s decision denying the test claim on *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, adopted March 22, 2019, means that the Commission must adopt a new decision in which it considers in the first instance whether reimbursement is required, consistent with the Third District Court of Appeal’s Opinion filed April 29, 2022, which held that “the Water Board’s new condition requires local governments to support ‘a new program’ within the meaning of article XIII B, section 6.”<sup>4</sup>

The reconsideration of the Test Claim in light of the Court’s decision is tentatively set for the May 26, 2023 hearing, and staff will issue a Draft Proposed Decision for comment at least eight weeks prior to that date.

### **Conclusion and Recommendation**

Accordingly, pursuant to the superior court’s judgment 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, adopted March 22, 2019.<sup>5</sup>

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<sup>3</sup> Exhibit B, Judgment and Peremptory Writ of Mandate, filed in Sacramento County Superior Court November 16, 2022 and served on the Commission December 1, 2022 (Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS).

<sup>4</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 2.

<sup>5</sup> Exhibit C, Test Claim Decision, *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, adopted March 22, 2019.

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

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

ORDER TO SET ASIDE THE TEST  
 CLAIM DECISION ADOPTED  
 MARCH 22, 2019 PURSUANT TO  
 COURT’S JUDGMENT AND WRIT

Pursuant to the unpublished opinion  
 issued April 29, 2022 in *City of San  
 Diego v. Commission on State  
 Mandates*, Court of Appeal, Third  
 Appellate District, Case No. C092800;  
 Judgment and Writ of Mandate issued  
 by the Sacramento County Superior  
 Court, Case No. 34-2019-80003169-  
 CU-WM-GDS

*(Adopted January 27, 2023)*

**ORDER TO SET ASIDE THE TEST CLAIM DECISION  
 ADOPTED MARCH 22, 2019 PURSUANT TO COURT’S JUDGMENT AND WRIT**

The Commission on State Mandates (Commission) adopted this Order during a regularly scheduled hearing on January 27, 2023.

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 adopted March 22, 2019 pursuant to court’s judgment and writ by a vote of [vote will be included in the adopted Order], as follows:

Member	Vote
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Scott Morgan, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	

Sarah Olsen, Public Member	
Shawn Silva, Representative of the State Controller	
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	

On April 29, 2022, the Third District Court of Appeal reversed the judgment issued by the Sacramento County Superior Court which had approved the Commission’s denial of the above titled Test Claim, finding that the test claim order imposes a new program or higher level of service as follows:

On the City’s appeal, we reverse. For reasons we will cover below, we conclude that the Water Board’s new condition requires local governments to support “a new program” within the meaning of article XIII B, section 6. But because the City’s showing that the Water Board’s permit condition establishes a “new program” is a necessary, though not sufficient, showing for reimbursement, we stop short of holding that the state must reimburse the City for the costs of compliance. We leave it to the Commission to consider in the first instance whether reimbursement is appropriate on these facts following remand.<sup>6</sup>

The Court of Appeal directed the trial court to remand the matter to the Commission for further proceedings consistent with the Court’s April 29, 2022 unpublished opinion.<sup>7</sup> On November 16, 2022, the superior court issued its judgment and writ, which was served on the Commission on December 1, 2022 directing the Commission as follows:

Judgment having been entered by this court, Respondent Commission on State Mandates is commanded to set aside its March 22, 2019 decision denying the test claim in *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, and to consider in the first instance whether reimbursement is required, consistent with the Third District Court of Appeal’s Opinion filed April 29, 2022 (attached at Exhibit A). The Commission shall file a return on the writ with this court, within 120 days of service of the writ, indicating what they have done to comply with the writ.<sup>8</sup>

Setting aside the decision of the Commission in the Test Claim on *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, adopted March 22, 2019, means that the Commission must consider in the first instance whether reimbursement is required, consistent with the Third District Court of Appeal’s Opinion filed April 29, 2022, which held that “the

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<sup>6</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 2.

<sup>7</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 21.

<sup>8</sup> Exhibit B, Judgment and Peremptory Writ of Mandate, filed in Sacramento County Superior Court November 16, 2022 and served on the Commission December 1, 2022 (Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS).

Water Board’s new condition requires local governments to support ‘a new program’ within the meaning of article XIII B, section 6.”<sup>9</sup>

In accordance with the superior court’s judgment and writ of mandate, the Commission hereby SETS ASIDE AS NULL AND VOID the following attached document:

Test Claim Decision on *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, adopted March 22, 2019.<sup>10</sup>

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Heather Halsey, Executive Director

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Date

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<sup>9</sup> Exhibit A, Unpublished Opinion issued April 29, 2022, *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800, page 2.

<sup>10</sup> Exhibit C, Test Claim Decision, *Lead Sampling in Schools: Public Water System No. 3710020*, 17-TC-03, adopted March 22, 2019.

**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 10, 2023, I served the:

- **Proposed Order to Set Aside the Test Claim Decision Adopted March 22, 2019 Pursuant to Court's Judgement and Writ issued January 10, 2023**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03*

Pursuant to the unpublished opinion issued April 29, 2022 in *City of San Diego v.*

*Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; 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 10, 2023 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/6/23

**Claim Number:** 17-TC-03

**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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