

Hearing: March 23, 2012

ITEM 12

**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

Case Appealed to the Third District Court of Appeal –

- ***State of California Department of Finance, State Water Resources Control Board, et al. v. Commission on State Mandates and County of San Diego, et al.***
Third District Court of Appeal, Case No. C070357
Sacramento County Superior Court, Case No. 34-2010-80000604
[*Discharge of Stormwater Runoff (07-TC-09)*]
Appeal Filed: February 7, 2012

Appeal is from a trial court judgment granting the Department of Finance's petition for writ of mandate and remanding the claim back to the Commission to: (1) set aside and vacate the statement of decision on 07-TC-09; and (2) adopt a new decision consistent with the Court's statement decision to determine whether the challenged permit provisions exceed the maximum extent practicable standard under the mandatory provisions of the Clean Water Act and are, thus state mandates under article XIII B, section 6 of the California Constitution.

Litigation Calendar

<u>Case</u>	<u>Hearing Date</u>
1. <i>Department of Finance v. Commission on State Mandates, San Diego Unified School Dist., et al.</i> Sacramento County Superior Court, Case No. 34-2010-80000529 [<i>Graduation Requirements Parameters and Guidelines Amendment, November 2008</i>]	June 1, 2012

¹ Based on information available as of March 9, 2012. 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.

Cases of Interest

- a. Hearing on the State’s motion for judgment on the pleadings requesting dismissal– April 13, 2012

Fenton Avenue Charter School, Granada Hills Charter High School, Palisades Charter High School, and Vaughn Next Century Learning Center v. John Chiang, as State Controller, Sacramento County Superior Court, Case No. 34-2010-00088619

This case challenges the Controller’s return of reimbursement claims filed by the charter schools on 21 reimbursable state-mandated programs. The Commission is not a party to this action.

The charter schools allege that they are “school districts” within the meaning of Government Code section 17519 and, thus, are eligible to claim reimbursement for state-mandated local programs under article XIII B, section 6 of the California Constitution. The charter schools request that the court declare charter schools to be school districts within the meaning of Government Code section 17519, that the Controller is obligated to accept and fully reimburse charter schools on their claims for reimbursement, and that the Controller’s actions are unconstitutional. The charter schools also request a petition for writ of mandate directing the Controller to make full payment on the claims, and an injunction against the Controller to prevent the Controller from returning reimbursement claims filed by charter schools.

The State Controller’s Office has filed a motion for judgment on the pleadings asking the court to dismiss the claim on the ground that the charter schools have not exhausted their administrative remedies with the Commission. The Controller’s Office further argues that there is no legal authority to provide reimbursement since the Commission decided in 2006 that charter schools are not eligible claimants under Government Code section 17519.

In May 2011, the court dropped the hearing on the motion for judgment on the pleadings with instructions to the plaintiffs to file the complaint in a writ department. No further filings have been made by the plaintiff in this case.

The hearing on the motion has been reset by the State Controller’s Office for April 13, 2012.