Hearing Date: March 29, 2006
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ITEM 8

TEST CLAIM

FINAL STAFF ANALYSIS

Government Code Section 8607
Statutes 1992, Chapter 1069 (Sen. Bill No. 1841)
California Code of Regulations, Title 19, Sections 2400-2450

Standardized Emergency Management System
03-RC-4506-01 (CSM-4506)

County of San Bernardino, Claimant

On Remand from the Los Angeles County Superior Court

EXECUTIVE SUMMARY

This case is on remand from the Los Angeles County Superior Court and addresses a prior decision of the Commission on State Mandates (Commission) on a test claim filed by the County of San Bernardino on the Standardized Emergency Management System, commonly known as "SEMS." SEMS was enacted in 1992 and is a complex emergency response system created to respond to and manage emergencies and disasters involving multiple jurisdictions and agencies.

The test claim statute, Government Code section 8607 (Stats. 1992, ch. 1069), required the Governor's Office of Emergency Services (OES), in coordination with interested state and local agencies, to establish by regulation a standardized emergency management system for use by all emergency response agencies for all emergencies or disasters referenced in the state emergency plan. The regulations became operative on September 2, 1994. (Cal. Code Regs., tit. 19, §§ 2400-2450.)

Government Code section 8607 and the regulations set forth a number of requirements, including the requirement for all state agencies to use SEMS to coordinate multiple jurisdiction or multiple agency emergency and disaster operations. (Gov. Code, § 8607, subd. (d).) Government Code section 8607, subdivision (e), requires local agencies to use SEMS in order to be eligible for funding of response-related personnel costs resulting from an emergency.

In 2002, the Los Angeles County Superior Court concluded that the test claim legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[1] The court, however, remanded the case to the Commission to determine whether the test claim legislation constitutes a reimbursable state-mandated program. In making its ruling, the court described the issue on remand as follows:

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[1] Court's Decision on Submitted Matter, page 4. (Exhibit A.)

> Respondent [Commission] contended that SEMS implementation by local agencies is optional and section 8607, in requiring said agencies to use SEMS to be eligible for funding of response-related costs, is only an incentive to use SEMS.
>
> Petitioner [County], on the other hand, contended that use of SEMS by local agencies is required if they want to continue receiving state disaster assistance funds previously available, and that local agencies are therefore forced to incur new increased costs to implement SEMS.
>
> This Court finds Petitioner's position on the issue more persuasive.[2]

Staff Analysis

As more fully described in the analysis, staff finds that Government Code section 8607 and the SEMS regulations adopted by Office of Emergency Services (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution based on the Supreme Court's 2003 decision in *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.)* (2003) 30 Cal.4th 727, and other cases.

Conclusion

Staff concludes that Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

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[2] Court's Decision on Submitted Matter, pages 4-5. (Exhibit A.)

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

12/22/95	Claimant files test claim (CSM 4506)
05/25/00	Commission adopts Statement of Decision
08/17/00	Claimant files petition for writ of mandate challenging the Commission's decision
02/27/02	Los Angeles County Superior Court issues judgment and order granting the petition for writ of mandate, finding that the test claim legislation constitutes a new program or higher level of service and remanding the case to the Commission to determine whether there is a reimbursable state mandate
09/25/02	Per Court Order, Commission sets aside Statement of Decision in CSM 4506
10/02/03	Commission staff issues letter requesting written comments from the parties
06/30/04	Claimant files opening comments
09/09/04	Office of Emergency Services (OES) files comments
10/14/04	Claimant files rebuttal comments
01/19/06	Draft staff analysis on remand is issued
02/09/06	Claimant files comments on draft staff analysis
03/07/06	Final staff analysis on remand is issued

Background

This case is on remand from the Los Angeles County Superior Court and addresses a prior decision of the Commission on State Mandates (Commission) on a test claim filed by the County of San Bernardino on the Standardized Emergency Management System, commonly known as "SEMS." SEMS was enacted in 1992 and is a complex emergency response system created to respond to and manage emergencies and disasters involving multiple jurisdictions and agencies.

The test claim statute, Government Code section 8607 (Stats. 1992, ch. 1069), required the Governor's Office of Emergency Services (OES), in coordination with interested state and local agencies, to establish by regulation a standardized emergency management system for use by all emergency response agencies for all emergencies or disasters referenced in the state emergency plan. The regulations became operative on September 2, 1994. (Cal. Code Regs., tit. 19, §§ 2400-2450.)[3] Government Code section 8607 and the regulations set forth a number of requirements, including the requirement for all state agencies to use SEMS to coordinate

[3] Section 2402, subdivision (m), defines "local government" subject to SEMS to mean "local agencies as defined in Government Code, § 8680.2 and special districts defined in California Code of Regulations, Title 19, § 2900(y)." Government Code section 8680.2 defines "local agency" to mean "any city, city and county, county, county office of education, community college district, school district, and special district."

multiple jurisdiction or multiple agency emergency and disaster operations. (Gov. Code, § 8607, subd. (d).) Government Code section 8607, subdivision (e), requires local agencies to use SEMS in order to be eligible for funding of response-related personnel costs resulting from an emergency. Government Code section 8607, subdivision (e), states the following:

(1) By December 1, 1996, each local agency, in order to be eligible for any funding of response-related costs under disaster assistance programs, shall use the standardized emergency management system ….

(2) Notwithstanding paragraph (1), local agencies shall be eligible for repair, renovation, or any other nonpersonnel costs resulting from an emergency.[4]

In 2002, the Los Angeles County Superior Court concluded that the test claim legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[5] The court, however, remanded the case to the Commission to determine whether the test claim legislation constitutes a reimbursable state-mandated program. In making its ruling, the court described the issue on remand as follows:

> Respondent contended that SEMS implementation by local agencies is optional and section 8607, in requiring said agencies to use SEMS to be eligible for funding of response-related costs, is only an incentive to use SEMS.
>
> Petitioner, on the other hand, contended that use of SEMS by local agencies is required if they want to continue receiving state disaster assistance funds previously available, and that local agencies are therefore forced to incur new increased costs to implement SEMS.
>
> This Court finds Petitioner's position on the issue more persuasive.[6]

In order to understand this claim, a summary of prior law and the SEMS program are provided below.

Prior Law

Before the enactment of the test claim statute and regulations, the Legislature enacted several statutes on emergency services. This legislation includes the California Emergency Services Act (ESA), the FIRESCOPE program (Firefighting Resources of California Organized for Potential Emergencies), and the Natural Disaster Assistance Act.

The ESA was enacted in 1970 (Gov. Code, §§ 8550, et seq.; Stats. 1970, ch. 1454) to assure that state and local entities will adequately prepare for and deal with the effects of natural, manmade, or war-caused emergencies through coordination of resources at the state and local level.[7, 8] The

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[4] See also, California Code of Regulations, title 19, sections 2401, 2443.

[5] Court's Decision on Submitted Matter, page 4. (Exhibit A.)

[6] Court's Decision on Submitted Matter, pages 4-5. (Exhibit A.)

[7] The ESA replaced the California Disaster Act of 1943 (former Mil. & Vet. Code, § 1500 et seq.).

[8] Government Code section 8550, subdivision (e); 62 Opinions of the California Attorney General, 701, 702 (1979).

ESA establishes three degrees of emergency; a state of war emergency, a state of emergency, and a local emergency.[9]

The ESA is comprehensive and contains a number of provisions, recognizing that "the actions of a numerous public agencies must be coordinated to effectively manage all four phases of emergency activity: preparedness, mitigation, response, and recovery."[10] The ESA confers emergency powers upon the Governor and the chief executives in accordance with the State Emergency Plan, and upon governing bodies of local government;[11] establishes the Governor's Office of Emergency Services (OES);[12] authorizes local disaster councils to provide for the mobilization of resources within cities and counties;[13] and provides for mutual aid during emergencies when the need arises for outside aid in any county, city and county, or city through the adoption of emergency plans and the Master Mutual Aid Agreement.[14] Although local disaster councils and mutual aid agreements were authorized under prior law by the ESA, they were not required.

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[9] A "state of war emergency" is defined in Government Code section 8558 as "the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent."

A "state of emergency" is defined in Government Code section 8558 as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state that are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat the emergency. Examples include conditions caused by "air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a 'state of war emergency,' which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage [that] requires extraordinary measure beyond the authority vested in the California Public Utilities Commission."

A "local emergency" is defined in Government Code section 8558 as those conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

[10] Government Code section 8588.3, subdivision (a).

[11] Government Code sections 8565 et seq., 8575 et seq., and 8635 et seq.

[12] Government Code section 8585.

[13] Government Code sections 8610 through 8614.

[14] Government Code sections 8561 and 8615 et seq.

The Master Mutual Aid Agreement is an agreement between the state and the various political subdivisions of the state for the furnishing of resources, facilities, and services in accordance with duly adopted mutual aid operation plans.[15] The agreement was executed in 1950 by "California's incorporated cities, all 58 counties, and the state."[16] Under the terms of the agreement, each party is required develop a plan providing for the effective mobilization of all its resources and facilities, both public and private, to cope with any type of disaster. In addition, each party agrees to furnish resources and facilities and to render services to each and every other party to the agreement to prevent and combat any type of disaster in accordance with duly adopted mutual aid operational plans. The mutual aid extended under the agreement and the operational plans adopted pursuant to the agreement must be consistent with the California Disaster Act (the predecessor to the ESA). Any party can terminate its participation in the agreement with proper notice. The agreement also encourages local mutual aid plans to combat local emergency situations.[17]

The ESA authorizes the Governor to divide the state into mutual aid regions for the more effective application, administration, and coordination of mutual aid and other emergency-related activities within an area.[18] A "mutual aid region" is defined as "a subdivision of the state emergency services organization, established to facilitate the coordination of mutual aid and other emergency operations within an area of the state consisting of two or more county operational areas."[19] Each county is designated as an operational area.[20]

In a state of war emergency, each operational area is required to "serve as a link in the system of communications and coordination between the state's emergency operating centers and the operating centers of the political subdivisions comprising the operational area."[21] During a state of emergency or a local emergency, the operational area "may" be used by the county and the political subdivisions comprising the operational area for the coordination of emergency activities and communications.[22] The ESA authorizes counties to organize and structure their operational area.[23]

In 1989, the Legislature established the FIRESCOPE program "to maintain and enhance the efficiency and effectiveness of managing multi-agency firefighting resources in responding to an

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[15] Government Code section 8561; 33 Opinions of the California Attorney General 169, 170 (1959).

[16] SEMS Guidelines, Part I, page 7 (included in Exhibit B.)

[17] See Exhibit G, Master Mutual Aid Agreement; 33 Opinions of the California Attorney General 169, 170-171 (1959).

[18] Government Code section 8600.

[19] Government Code section 8559.

[20] Government Code section 8605.

[21] *Ibid.*

[22] *Ibid.*

[23] *Ibid.*

incident."[24] OES is directed under the FIRESCOPE program to provide for the research, development, and implementation of technologies, facilities and procedures to assist state and local fire agencies in the better utilization and coordination of firefighting resources in responding to incidents.[25] To meet its goals, the Legislature directed that the FIRESCOPE program include improved methods to coordinate multi-agency firefighting resources, standard fire terminology for improving incident management, improved multi-agency fire communications, multi-agency training, a common mapping system, improved fire information management systems, and regional operational coordination centers.[26]

Finally, in 1974, the Legislature enacted the Natural Disaster Assistance Act to provide state financial assistance to eligible local agencies that apply for state funds to help pay for the costs of recovery following a natural disaster.[27] "Natural disaster" is defined as a "fire, flood, storm, tidal wave, earthquake, or other similar public calamity resulting from natural causes or in the case of fire which the Governor determines presents a threat to public safety, by man-made causes."[28] If an application is approved and money is appropriated by the Legislature, the Director of Emergency Services allocates funds to meet the costs for repair or restoration of real property of a local agency used for essential governmental services, other than for normal maintenance.[29] The funds can be applied to buildings, levees, flood control works, channels, irrigation works, city streets, county roads, bridges, and other public works that are damaged or destroyed by a natural disaster.[30] Funds can also be applied to personnel costs, equipment costs, and the cost of supplies and materials used during disaster response activities incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of regularly assigned emergency services and public safety personnel.[31] Except as expressly specified in statute, the state share of project funds shall be no more than 75 percent of total state eligible costs.[32]

SEMS

As a result of events that occurred during the 1991 East Bay Oakland Hills fire, the Legislature amended the ESA in 1992 by adding the test claim statute, Government Code section 8607, to the program.[33] The statute provides, in relevant part, that:

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[24] Health and Safety Code section 13071.

[25] *Ibid*.

[26] Health and Safety Code section 13072.

[27] Government Code sections 8680 et seq.

[28] Government Code section 8680.3.

[29] Government Code sections 8680.4, 8680.5, 8685, 8685.4.

[30] Government Code section 8680.4

[31] Government Code section 8685, subdivision (a).

[32] Government Code section 8686.

[33] SEMS Guideline, Part I, page 3 (included in Exhibit B.)

- OES shall establish a standardized emergency system for use by all emergency response agencies. The system shall be applicable during, but not limited to, those emergencies and disasters referenced in the state emergency plan.
- The standardized emergency management system shall include the following systems of framework: the Incident Command Systems adapted from the systems originally developed by the FIRESCOPE program; the multiagency coordination system developed by the FIRESCOPE program; the mutual aid agreement and related mutual aid systems such as those used in law enforcement, fire service, and coroners' operations; and the operational area concept.
- Individual agencies' roles and responsibilities agreed upon and contained in existing laws or the state emergency plan are not superseded by SEMS.
- OES, in coordination with the State Fire Marshall's Office, the Department of the California Highway Patrol, the Commission on Peace Officer Standards and Training, the Emergency Medical Services Authority, and all other interested state agencies with designated response roles in the state emergency plan, shall jointly develop an approved course of instruction for use in training all emergency response personnel on SEMS.
- State agencies are required to use SEMS. Local agencies, in order to be eligible for response-related personnel costs under the disaster assistance program, shall use SEMS.

Regulations establishing the SEMS program were adopted by OES in 1994. (Cal. Code Regs., tit. 19, §§ 2400-2450.) Pursuant to section 2401 of the regulations, "SEMS requires emergency response agencies [to] use basic principles and components of emergency management including ICS [Incident Command System], multi-agency or inter-agency coordination, the operational area concept, and established mutual aid systems." Section 2401 further provides that local agencies must use SEMS by December 1, 1996, in order to be eligible for state funding of response-related personnel costs for emergency work activities, debris removal, and emergency protective measures as defined in sections 2920, 2925, and 2930 of the Office of Emergency Services regulations.

Section 2403 of the SEMS regulations designates five levels in the SEMS organization that are required to be used in responding to, managing, and coordinating multiple agency or multiple jurisdiction incidents, whether single or multiple discipline. The five levels are field response, local government, operational area, regional, and state. Each level is activated as needed. Local agencies actively participate in the field response, operational area, and local government levels of SEMS. Each of the five levels are required to provide management, operations, planning/intelligence, logistics, and finance/administration functions, as defined in section 2402 of the regulations.

The field response level "commands emergency response personnel and resources to carry out tactical decisions and activities in direct response to an incident or threat." (Cal. Code Regs., tit. 19, § 2403, subd. (b)(1).) Emergency response agencies operating at the field response level of single jurisdictional or multi-agency incidents are required to use the Incident Command System. (Cal. Code Regs., tit. 19, § 2405, subd. (a).) The Incident Command System is the nationally used standardized on-scene emergency management concept specifically designed to allow its users to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents. (Cal. Code Regs., tit. 19, § 2402, subd. (l).) The

components of the Incident Command System are common terminology, modular organization whereby staff builds from the top down with responsibility and performance placed initially with the Incident Commander, unified command structure, consolidated action plans, manageable span-of-control, pre-designated incident facilities, comprehensive resources management, and integrated communications. (Cal. Code Regs., tit. 19, § 2405, subd. (a)(3).)

The local government level "manages and coordinates the overall emergency response and recovery activities within their jurisdiction." (Cal. Code Regs., tit. 19, § 2403, subd. (b)(2).) The local government level of SEMS is activated when the local government emergency operations center is activated and/or when a local emergency is declared or proclaimed. (Cal. Code Regs., tit. 19, § 2407, subd. (a).) When the local government level is activated, communications and coordination are required to be established between the Incident Commander and the department operations center to the emergency operations center. (Cal. Code Regs., tit. 19, § 2407, subd. (b).) Coordination of fire and law enforcement resources shall be accomplished through their respective mutual aid systems. (*Ibid*.)

The operational area level "manages and/or coordinates information, resources, and priorities among local governments within the operational area and serves as the coordination and communication link between the local government level and the regional level." (Cal. Code Regs., tit. 19, § 2403, subd. (b)(3).) The operational area level is activated in the following circumstances: when a local government within the operational level has activated its emergency operations center and requested activation of the operational area emergency operations center to support the emergency operations; two or more cities within an operational area have declared or proclaimed a local emergency; the county and one or more cities have declared or proclaimed a local emergency; a city, city and county, or county has requested a governor's proclamation of a state of emergency; the operational area is requesting resources from outside its boundaries; or when the operational area has received resource requests from outside its boundaries. (Cal. Code Regs., tit. 19, § 2409, subd. (f).)

Each county geographic area is designated an operational area. (Cal. Code Regs., tit. 19, § 2409, subd. (a).) All local governments within the operational area shall be organized by December 1, 1995, and the county board of supervisors shall be responsible for its establishment. (Cal. Code Regs., tit. 19, § 2409, subd. (b).) The county government shall serve as the lead agency of the operational area unless another member agency of the operational area assumes that responsibility by written agreement with county government. (Cal. Code Regs., tit. 19, § 2409, subd. (d).) The lead agency of the operational area shall coordinate information, resources and priorities among the local governments within the operational area; coordinate information, resources and priorities between the regional level and the local government level; and use multi-agency or inter-agency coordination to facilitate decisions for overall operational area level emergency response activities. (Cal. Code Regs., tit. 19, § 2409, subd. (e).) Coordination of fire and law enforcement resources shall be accomplished through their respective mutual aid systems. (*Ibid*.)

The regional level "manages and coordinates information and resources among operational areas within the mutual aid region designated pursuant to Government Code section 8600 and between the operational areas and the state level." (Cal. Code Regs., tit. 19, § 2403, subd. (b)(4).) The regional level is activated "when any operational level emergency operations center within the mutual aid region is activated." (Cal. Code Regs., tit. 19, § 2411, subd. (a).) Under such circumstances, communications and coordination shall be established with the operational areas,

the state level emergency operations center, and regional level department operations centers. OES has the lead responsibility for planning and developing SEMS at the regional level.[34]

The state level "manages state resources in response to the emergency needs of the other levels, manages and coordinates mutual aid among the mutual aid regions and between the regional level and state level, and serves as the coordination and communication link with the federal disaster response system.

The SEMS regulations further require local agencies, in order to be eligible for response-related personnel costs from the state, to provide SEMS training to each emergency response employee and ensure that each employee can demonstrate and maintain, to the level deemed appropriate, the minimum SEMS performance objectives required by their agencies' training programs. Local agencies are required to use the Minimum Performance Objectives contained in the Approved Course of Instruction (ACI) dated March 1, 1995, for training. (Cal. Code Regs., tit. 19, § 2428.)[35]

In addition, each local agency is required to document its compliance with SEMS in the areas of planning, training, exercises, and performance in order to be eligible for state funding of response-related personnel costs. All applicants for reimbursement of response-related personnel costs shall self-certify compliance with the program. Evidence of compliance with SEMS shall be available for review. A SEMS compliance review occurs when the OES Director determines sufficient evidence exists to warrant a review. The OES Director decides whether the agency being evaluated is in compliance with SEMS. If the agency disagrees with the decision, it can request reconsideration of the decision. (Cal. Code Regs., tit. 19, §§ 2443 and 2444.)

SEMS regulations also require the completion of an after-action report, which shall contain, at a minimum, "a review of response actions taken, application of SEMS, suggested modifications to SEMS, necessary modifications to plans and procedures, identified training needs, and recovery activities to date." (Cal. Code Regs., tit. 19, § 2450, subd. (b).) Any city, city and county, or county declaring a local emergency for which the governor proclaims a state of emergency shall complete and transmit the after-action report to OES within ninety (90) days of the close of the incident period. (Cal. Code Regs., tit. 19, § 2450, subd. (a).)[36]

In 1995, SEMS Guidelines were issued by OES to further explain the program and to provide examples and models that may be used to plan, develop, and maintain SEMS consistent with the regulations.[37] Part II of the Guidelines provides recommendations on how a local agency, for each level of organization in SEMS, should plan and develop the program for compliance with SEMS.[38] The Guidelines, like the test claim statute and regulations, indicate that local agencies

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[34] SEMS Guidelines, Part II (D). (Exhibit G.)

[35] See SEMS Guidelines, Part III, for the Approved Course of Instruction. (Exhibit G.)

[36] SEMS Guidelines, Part III, provides a recommended process for preparing the after-action report and its supporting documentation.

[37] SEMS Guidelines, Part I, page 1 (included in Exhibit B.)

[38] Parts II and III of the Guidelines are identified as "Draft 12/23/94." But, as of January 12, 2006, they are on the OES website (http:www/oes.ca.gov) under "SEMS Guidelines."

must use SEMS to be eligible for state funding of response-related personnel costs. The following outlines a summary of the planning, training, and exercise activities for the organizational levels of SEMS that are recommended by OES for local agencies.[39]

Field Response Level:

- Adopt policies and procedures for using the Incident Command System (ICS) in field response. Communicate the policy to all personnel in agencies and departments that provide field level response. These agencies and departments typically include fire services, law enforcement, emergency medical services, public works, street and road, transportation, water/wastewater, levee maintenance/flood control, coroner/medical examiner, utilities, environmental health, parks and recreation, and school districts.
- Update field manuals and standard operating procedures to incorporate the Incident Command System.
- Develop a training plan for field response personnel and document the training for all personnel trained. The plan shall use the state-approved SEMS training curriculum, or an alternate program that provides for the same minimum training competencies.
- Develop field exercises using the Incident Command System on an annual or more frequent basis. It is recommended that the exercise program coordinate with other agencies for multi-agency or multi-jurisdictional field exercises.

Local Government Level:

- Adoption by the governing body of the SEMS program.
- Update existing ordinances, resolutions, or emergency plans to reflect the use of SEMS.
- Appoint lead staff for SEMS planning. The lead staff should be responsible for communicating information within the local government on SEMS requirements and guidelines; coordinating SEMS development among departments and agencies; coordinating with other local governments, the operational area, and volunteer and private agencies on development of SEMS; and incorporating SEMS into the local government emergency plan and procedures, and emergency operations center organization. The Guidelines recommend the identification of all departments and agencies of the local government involved in the field level and all departments and agencies of the local government with department operations centers.
- Agreement by the governing body to participate in the operational area. The Guidelines state the following: "An essential part of SEMS is developing an effective operational area organization and systems for coordination within the operational area. All cities should be active participants in the development of the operational area within their respective counties. Special districts that serve multiple jurisdictions should also participate in developing the operational area."

[39] Similar activities are outlined by the claimant in the matrix attached to the comments dated June 30, 2004. (Exhibit B.)

- Provide SEMS training and document the training for all local government staff who may participate in emergencies in the emergency operations center, in department operations centers, or at the field level pursuant to the state-approved course of training.
- Develop an exercise program that provides periodic exercises for emergency operations center and department operations center personnel. Page 8 of Part II (B) of the Guidelines provides a recommended exercise program.

Operational Area Level:

- Identify all local governments, volunteer, and private organizations in the operational area. Determine special districts' emergency roles and methods of coordinating with them.
- Establish the operational area through the board of supervisors' adoption of a policy, resolution, or ordinance. Elements needed for an effective operational area include an established policy for use of the operational area in emergencies, agreements among local governments to participate in the operational area, designated lead agency and staff to maintain the operational area, designated operational area emergency management organization (emergency operations center staff and operational area mutual aid coordinators), adequate emergency operations center facility, communications link with member agencies, twenty-four hour a day answering point for emergency notifications from local government and state warning center, and operational area emergency plan and procedures. The Guidelines also recommend the formation of an operational area disaster or emergency council and the development of emergency operations center activation criteria.
- Train all personnel and document the training for all employees that will be staffing positions in the operational area emergency operations center pursuant to the state-approved course of instruction.
- Develop an exercise program that provides periodic exercises for emergency operations center and department operations center personnel. Page 8 of Part II (C) of the Guidelines provides a recommended exercise program.

In May 1996, the Office of Emergency Services issued Bulletin L1-1 on SEMS.[40] The Bulletin states in relevant part that "[u]nder state law and regulations adopted by the Governor's Office of Emergency Services, SEMS is a discretionary activity by local government." The Bulletin further states that "if a local government cannot document and show evidence of its participation in an organized operational area during an emergency, this would potentially result in forfeiture of its right to access state funding for response-related personnel costs."

Claimant's Position

The claimant contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant states the following:

[40] Administrative Record for CSM 4506, page 308. (See Yellow Volumes.)

> [A]t first blush, SEMS appears to be a voluntary program. However, on further analysis, it is the furthest from voluntary but is, in fact, mandatory with substantial costs attendant thereto.
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> Prior to the enactment of Chapter 1069, Statutes 1992, the within test claim legislation, counties and cities were authorized to create disaster councils to develop plans for emergencies, but such actions were strictly discretionary. Prior to SEMS, San Bernardino relied heavily on reimbursement for disaster response and recovery provided by the California Natural Disaster Assistance Act (NDAA), which had no strings attached. Now, failure to use SEMS results in the loss of NDAA's funding. Government Code section 8607(e). The penalty for failure to use SEMS is inordinate: just for the 1992 Landers/Big Bear earthquakes and the 1993 winter storms in San Bernardino, absent compliance with SEMS, San Bernardino would have lost in excess of $600,000.[41]

The claimant argues that "[t]he nature of the financial penalties for noncompliance with SEMS is that it renders what would appear on its face voluntary, to be mandatory."[42]

The claimant filed comments on the draft staff analysis contending that:

- The Commission should "defer to the Superior Court's analysis and … conclude that SEMS implementation is mandatory and that SEMS constitutes a reimbursable state-mandated program."[43]
- The public agencies in *Kern High School Dist.* and *City of Merced* were not subject to any type of "financial penalty" for nonparticipation in the test claim program and, thus, these cases should not be applied here.
- If the Legislature intended SEMS to be voluntary, then the Legislature would not have required counties to be responsible for the "middle cog of the process" at the operational level of SEMS. "The County is required to be an integral part of the process."[44]

Position of the Office of Emergency Services

The Office of Emergency Services (OES) contends that the test claim legislation is not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. OES argues that the test claim legislation does not require local agencies to use SEMS. OES states the following:

> Equally clear is section 8607(e) that, unlike subsection (d), does not require the use of SEMS for local agencies, but rather provides an incentive for participation, i.e., the potential for funding of personnel-related response costs under the Natural Disaster Assistance Act. [Footnote omitted.] (Government Code sec. 8680 et seq.) This relatively small part of the overall post-disaster funding

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[41] Comments dated June 30, 2004, pages 3 and 4. (Exhibit B.)

[42] *Id*., page 5; claimant's rebuttal comments dated October 14, 2004, page 2. (Exhibit D.)

[43] Claimant's comments to draft staff analysis dated February 8, 2006, page 2. (Exhibit F.)

[44] *Id*. at page 5.

> potentially available to local governments is still subject to eligibility requirements not relating to SEMS and predating SEMS, not the least of which is a requirement that the Legislature appropriate funds necessary to provide the relief. (Government Code sec. 8685.)[45]

OES further states that:

> Even if there was a direct cause and effect relationship between compliance with SEMS and forfeiture of the personnel cost reimbursement, the claimant's arguments about the impact of a failure to comply with SEMS certainly does not meet the "certain and severe penalties" such as "double … taxations" and other "draconian" thresholds affirmed by the California Supreme Court. (*Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 751.) We certainly agree that when a community is rebuilding its public infrastructure after a disaster, every dollar is important. However, compliance with SEMS does not substantially affect the rebuilding that often equates to tens of millions of dollars. [Footnote omitted.] Lack of compliance with SEMS can only impact a sliver of a community's overall cost recovery, and then only if all other eligibility criteria are met and the Legislature appropriates the funding.[46]

OES contends that "SEMS is used by local government, not because of a statutory or regulatory mandate, but because of its inherent benefits including the cost savings resulting from more efficient response to disasters."[47]

Finally, with regard to the two incidents alleged by claimant with personnel –related costs totaling $600,000, OES states that the claimant "received approximately $5.6 million dollars in federal and state financial assistance as a result of the two disasters…"[48] OES also states that it provides annual grant funds to counties to implement SEMS or other emergency management programs, and that the claimant has requested and received approximately $282,000 since the inception of SEMS.[49]

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[45] OES comments dated September 9, 2004, page 1. (Exhibit C.)

[46] *Id.* at page 2.

[47] *Ibid*.

[48] *Id*. at page 2, footnote 3.

[49] *Id*. at page 3, footnote 4.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[50] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[51] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[52] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[53] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[54]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[55] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[56] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[57]

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[50] Article XIII B, section 6, subdivision (a) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[51] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[52] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[53] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[54] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[55] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[56] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[57] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[58]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[59] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[60]

Issue 1: Do Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-2450) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution?

In the present case, the Los Angeles Superior Court determined that the SEMS program constitutes a new program or higher level of service within the meaning of article XIII B, section 6. This conclusion is final and can no longer be challenged by the parties.[61] Thus, the sole issue on remand is whether the test claim legislation constitutes a reimbursable state-mandated program.

The claimant argues the Commission should defer to the statements of the Los Angeles County Superior Court, "find[ing] Petitioner's position on the [state mandate] issue more persuasive" and approve this test claim. The court's statement, however, does not constitute a conclusion of law with respect to the state-mandate issue since the court remanded the issue back to the Commission based on the Supreme Court's directive in *Lucia Mar*.[62] The court agreed, based on *Lucia Mar*, that the Commission has the duty to decide "in the first instance" whether a statute constitutes a reimbursable state-mandated program.

> In *Lucia Mar*, the Supreme Court held that whether test claim legislation constitutes a state mandate is for the Commission on State Mandates to determine, "as it is charged by section 17551 of the Government Code with the duty to decide in the first instance whether a local agency is entitled to reimbursement under section 6 of article XIII B." [Citation to *Lucia Mar*

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[58] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[59] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[60] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[61] *George Arakelian Farms, Inc. v. Agricultural Labor Relations Board* (1989) 49 Cal.3d 1279, 1291. (Exhibit G.)

[62] *Lucia Mar, supra*, 44 Cal.3d 830, 837.

> omitted.] Because the Commission here did not reach the mandate issue, that issue must be remanded. [63]

As more fully described below, staff finds that Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution based on the Supreme Court's 2003 decision in *Kern High School Dist., supra*, 30 Cal.4th 727, and other cases.

The courts have continued to hold that *not* all costs incurred by a local entity as a result of a new program or higher level of service are reimbursable under article XIII B, section 6. "Section 6 was not intended to entitle local entities to reimbursement for all increased costs resulting from legislative enactments, but only those costs mandated by a new program or an increased level of service imposed upon them by the State."[64] Thus, even if a statute constitutes a new program or higher level of service, it does not necessarily lead to the conclusion that a cost incurred by the local entity is state-mandated and, thus reimbursable under article XIII B, section 6.[65] The courts have strictly construed the meaning and effects of statutes analyzed under article XIII B, section 6, and have not applied section 6 as an equitable remedy:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." [Citations omitted.]["Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation."] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies.[66]

The test claim statute, Government Code section 8607, subdivision (d), requires all state agencies to use SEMS to coordinate multiple jurisdiction or multiple agency emergency and disaster operations: "By December 1, 1996, all state agencies shall use [SEMS] …" Government Code section 8607, subdivision (e), on the other hand, states that "each local agency, *in order to be eligible for any funding of response-related [personnel] costs under disaster assistance programs,* shall use the standardized emergency management system [SEMS] …" (Emphasis added.) Section 2401 of the OES regulations contains similar language. If an agency participates in SEMS, the agency is required to perform a number of activities to coordinate the emergency response between multiple agencies, including the preparation of an after-action report and training.

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[63] Court's Decision on Submitted Matter, page 5. (Exhibit A.)

[64] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1816; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; *Kern High School Dist., supra,* 30 Cal.4th 727, 735; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189-1190.

[65] *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 815.

[66] *City of San Jose, supra,* 45 Cal.App.4th 1802, 1816-1817.

As correctly asserted by the claimant, local agencies received state funding pursuant to the Natural Disaster Assistance Act under prior law, following an application and an appropriation made by the Legislature, to pay for disaster-related expenses, including personnel costs, "without any [further] strings attached." [67]

Nevertheless, for the reasons below, the Legislature's imposition of conditions on a local agency's eligibility to receive response-related personnel funding following an emergency or disaster does not constitute a reimbursable state mandate within the meaning of article XIII B, section 6 of the California Constitution.

In 2003, after the Los Angeles Superior Court issued its judgment and writ in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.[68] In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[69] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders." [70]

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled. [71] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[72]

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[67] Government Code sections 8680.4, 8680.5, 8685, 8685.4.

[68] *Kern High School Dist., supra*, 30 Cal.4th 727.

[69] *Id.* at page 737.

[70] *Ibid*.

[71] *Id.* at page 743.

[72] *Ibid.*

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][73]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.[74]

Similarly, local agencies here are not legally compelled to comply with SEMS. Under the rules of statutory construction, when the statutory language is plain, the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][75]

Moreover, the court may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the court is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[76] In addition, where materially different words are used in the same connection in different parts of the statute, it will be presumed that the Legislature intended different meanings.[77]

Here, the Legislature used materially different words when directing the participation in SEMS by state and local agencies. The plain language of Government Code section 8607 mandates state agencies to use SEMS, but only requires local agencies to use SEMS in order to be eligible for response-related personnel costs under the disaster assistance programs. Thus, while SEMS imposes a mandate on the state, it must be presumed that the Legislature did not intend that SEMS impose a mandate on local agencies. This interpretation is shared by OES, the agency directed by the Legislature to implement and enforce the SEMS program. In May 1996, the OES issued Bulletin L1-1 on SEMS.[78] The Bulletin states in relevant part that "[u]nder state law and regulations adopted by the Governor's Office of Emergency Services, SEMS is a

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[73] *Id.* at page 731.

[74] Id. at pages 744-745.

[75] *Estate of Griswald* (2001) 25 Cal.4th 904, 910-911. (Exhibit G.)

[76] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757. (Exhibit G.)

[77] *People v. Trevino* (2001) 26 Cal.4th 237, 242. (Exhibit G.)

[78] Administrative Record for CSM 4506, page 308. (See Yellow Volumes.)

discretionary activity by local government." The construction given to a statute by the administrative officials charged with its enforcement or implementation is entitled to great weight.[79]

The claimant concedes that Government Code section 8607, subdivision (e), and the corresponding regulations appear voluntary on its face. But the claimant contends that the "financial penalties" imposed for noncompliance with SEMS makes the program mandatory.[80] The claimant states that the "initial decision" to participate in the program creates the "financial penalties."[81] A similar argument was raised by the school districts in *Kern High School Dist*., and rejected by the court based on the facts of the case.[82]

In *Kern High School Dist*., the school districts urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in California businesses facing "a new and serious penalty – full, double unemployment taxation by both state and federal governments."[83] Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies – the court stated: "In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds."[84]

However, the court in *Kern High School Dist*. found that the facts before it failed to amount to such a "de facto" mandate. The court concluded that:

> [T]he circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants' phrasing, a "de

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[79] *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7. (Exhibit G.)

[80] Claimant's rebuttal comments dated October 14, 2004. (Exhibit D.)

[81] Claimant's comments to draft staff analysis, page 3. (Exhibit F.)

[82] To support its argument, claimant cites a rule of statutory construction that "where a legislative provision is accompanied with a penalty for failure to observe it, the provision is mandatory." (58 Cal.Jur.3d, Statutes 149, pp. 545-546.) The cases cited by the claimant, however, each deal with specific circumstances where a statutory provision requires certain action to be taken within specified time limits. The cases cited by claimant, however, do not involve questions of state-mandated costs within the meaning of article XIII B, section 6 and are, therefore, not relevant. Rather, staff finds that the California Supreme Court's decision in *Kern High School Dist., supra,* 30 Cal.4th 727, is directly on point and applies here.

[83] *City of Sacramento, supra*, 50 Cal.3d 51, 74.

[84] *Kern High School Dist., supra,* 30 Cal.4th 727, 752.

> facto" reimbursable state mandate. Contrary to the situation that we described in City of Sacramento … a claimant that elects to discontinue participation in one of the programs here at issue does not face "certain and severe … penalties" such as "double … taxation" or other "draconian" consequences … but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6.[85]

The court reasoned as follows:

> Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary.[86]

The court's reasoning applies to this case. If a local agency decides not to participate in SEMS, or elects to discontinue participation in the program, the agency does not face "certain and severe penalties" such as "double taxation" or other "draconian measures." It simply loses its right to apply for state funding to assist the local agency in paying for its response-related *personnel* costs. The agency would still be eligible to receive funding for repair, renovation, or other non-personnel costs resulting from an emergency.[87]

In this respect, the claimant states that "[w]e would agree that the impact of the forfeiture in comparison to the overall cost recovery *could* be small … [h]owever, the dollars for disaster response personnel costs could be large." (Emphasis in original.)[88] There is no evidence in the law or in the record, however, that the reduced funding amounts to a "certain and severe" penalty imposed on a local agency. As stated by the California Supreme Court, "[a]lthough it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program . . . the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary."[89] Rather, the courts have continued to find that the Legislature's decision to withdraw or reduce

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[85] *Id*. at page 754.

[86] *Id.* at pages 753-754.

[87] Government Code section 8607, subdivision (e)(2); California Code of Regulations, title 19. sections 2401, 2443.

[88] Claimant comments dated October 14, 2004, page 2. (Exhibit D.)

[89] *Kern High School Dist., supra,* 30 Cal.4th 727, 753-754.

state funding previously available to local agencies does not violate the purpose behind article XIII B, section 6 and, thus, does not, in itself, constitute a reimbursable state mandate.[90]

Finally, the claimant argues that *if* the Legislature intended SEMS to be voluntary, then the Legislature would not have required counties to be responsible for the "middle cog of the process" at the operational level of SEMS. The claimant contends that "[t]he County is required to be an integral part of the process."[91] Staff disagrees with this argument. The test claim statute, Government Code section 8607, provides that SEMS must include "the operational area concept, as defined in [Government Code] Section 8559." Government Code section 8559 was enacted in 1970 (and derives from the 1943 California Disaster Act in the Military and Veterans Code). Section 8559 defines an "operational area" as "an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area." OES included the operational area concept in SEMS when it adopted the regulations to implement the program. The "operational area level" of SEMS is defined in section 2409 of the OES regulations to mean "an intermediate level of the state emergency services organization, consisting of a county and all political subdivisions within the county area." The regulation also states that "each county geographic area is designated as an operational area." The regulation, however, recognizes that a local agency's participation in the SEMS program is not mandatory with the language in subdivision (c), which expressly states that "[t]he operational area authority and responsibility under SEMS *shall not be affected by non-participation of any local government(s) within the operational area*." (Emphasis added.)

Therefore, staff finds that Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

Based on the foregoing, staff concludes that Government Code section 8607 and the SEMS regulations adopted by OES (Code of Regs., tit. 19, §§ 2400-2450) do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

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[90] *Id.* at page 748; see also, *County of Sonoma, supra,* 84 Cal. App.4th 1264, 1285, and *County of Los Angeles, supra,* 32 Cal.App.4th 805, 817-818.

[91] Claimant's comments to draft staff analysis, page 5. (Exhibit F.)