



September 30, 2024

Ms. Nora Frimann
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

Ms. Colleen Winchester
City of San Jose
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

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

Re: Decision on Appeal of Executive Director Decision
Rejection of Duplicate Test Claim Filing, 23-AEDD-01
City of San Jose, Appellant

Dear Ms. Frimann and Ms. Winchester:

On September 27, 2024, the Commission on State Mandates adopted the Decision denying the Appeal of Executive Director Decision on the above-captioned matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE APPEAL OF EXECUTIVE
DIRECTOR DECISION:

Rejection of Duplicate Test Claim Filing

Filed on June 28, 2024

City of San Jose, Appellant

Case No.: 23-AEDD-01

Appeal of Executive Director Decision

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 27, 2024)

(Served September 30, 2024)

APPEAL OF EXECUTIVE DIRECTOR DECISION

The Commission on State Mandates adopted the attached Decision on
September 27, 2024.



Heather Halsey, Executive Director

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STATE OF CALIFORNIA

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REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.
(Adopted September 27, 2024)
(Served September 30, 2024)

DECISION

The Commission on State Mandates (Commission) heard and decided this Appeal of Executive Director Decision (AEDD) during a regularly scheduled hearing on September 27, 2024. Colleen Winchester and Rajani Nair appeared on behalf of the City of San Jose (appellant).

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 the Proposed Decision to approve the AEDD by a vote of 7-0, as follows:

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

Summary of the Findings

This is an appeal of the Executive Director’s decision to reject a test claim filing by City of San Jose (appellant) on California Regional Water Quality Control Board, San

Francisco Bay Region, Order No. R2-2022-0018 because it duplicated the Test Claim first filed and deemed complete by Union City (*California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*).

The City of San Jose (appellant) contends its filing should be accepted and consolidated with Union City's Test Claim because Union City did not plead Provision C.17.a.ii.3. of the test claim permit, requiring permittees to implement best management practices related to the unsheltered and homeless, and its homeless population and costs to comply with Provision C.17.a. are much higher and will make it more difficult to levy fees sufficient to pay for the mandate.¹

The Commission denies the appeal and finds the Executive Director's decision to reject appellant's test claim filing is correct as a matter of law.

The process for seeking reimbursement under article XIII B, section 6 of the California Constitution is identified in Government Code sections 17500, et seq. The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."² The determination whether a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 is a question of law applicable to all eligible local government claimants, and the test claim process, providing for the filing of a single test claim, is intended to protect the legal rights and interests of all eligible local government claimants to the claim.³ Thus, Government Code section 17521 defines a "test claim" as the *first claim* filed with the Commission alleging a particular legislative enactment or executive order imposes costs mandated by the state. The Commission's regulations further provide "*no duplicate test claims will be accepted by the Commission.*"⁴ If, however, a local agency or school district contends the test claim filing affects them differently than the test claimant — meaning their legal rights and interests are not protected by the test claim filing — then that local agency or school district may file a test claim on the same statutes or executive orders, "but must demonstrate how and why they are affected differently."⁵

¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333. See also, *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

³ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁴ California Code of Regulations, title 2, section 1183.1(b).

⁵ California Code of Regulations, title 2, section 1183.1(b).

Union City's Test Claim (22-TC-07) was the first claim filed on the test claim permit. Test Claim 22-TC-07 was deemed complete and pleads all of Provision C.17.a., as noted on the Test Claim form (which expressly identifies Provision C.17.a.), in the narrative, and in the declarations supporting the claim.⁶ Provision C.17.a.ii.3. requires: "Each Permittee shall identify *and implement* appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts."⁷ And the Declarations filed by Union City expressly state "The Permittees will incur additional costs throughout the MRP3 term *to implement the best management practices*."⁸ Thus, Union City's Test Claim (22-TC-07) pleads Provision C.17.a., including Provision C.17.a.ii.3., and the appellant's test claim filing on the same provision is duplicative of Test Claim 22-TC-07.

Moreover, the appellant's legal rights and interests are protected by Union City's Test Claim, even if its costs to comply with Provision C.17.a. are higher. Increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution.⁹ Rather, the Commission is required to determine as a matter of law if Provision C.17.a. imposes new requirements mandated by the state, constitutes a new program or higher level of service, and results in increased costs mandated by the state of at least \$1,000 in accordance with Government Code sections 17514, 17556, and 17564. Government Code section 17556(d) provides the Commission "shall not find costs mandated by the state, as defined in Section 17514" if "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." The fee authority issue is one of law, and not one of fact, and depends only on whether local government has "authority, i.e., the right or power, to levy fees," and other factors such as economic evidence that may make the exercise of that authority impractical or undesirable are not relevant.¹⁰

⁶ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 2, 34, 58, 111.

⁷ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 125-127.

⁸ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 111, 58 (Declarations of Sandra Mathews and Farooq Azim, emphasis added).

⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

¹⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382; *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564.

Finally, the Commission’s regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission’s determination of Test Claim 22-TC-07 without accepting and consolidating its filing with Union City’s Test Claim. Section 1183.1(b) of the Commission’s regulations expressly provides:

Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.¹¹

Thus, the appellant is not prevented from providing the Commission with written comments, evidence, and testimony of a larger homeless population and the higher costs it has incurred and can inform the Commission’s decision through the test claim hearing process.

If Union City’s Test Claim (22-TC-07) is approved, the appellant and other eligible local government permittees identified in the permit may file reimbursement claims with the State Controller’s Office, in accordance with the parameters and guidelines, for the actual costs incurred.¹²

Accordingly, the Commission denies this appeal.

COMMISSION FINDINGS

I. Chronology

06/30/2023	Union City filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, ¹³ which was deemed incomplete.
06/30/2023	The appellant filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, which was deemed duplicative and incomplete.
10/11/2023	Commission staff sent a notice to the appellant advising the test claim filing was duplicative and incomplete, but if Union City did not timely cure its test claim filing, then the appellant’s test claim could be accepted if it was timely cured. ¹⁴
10/24/2023	The appellant filed a request for extension of time to file documents to cure its test claim filing, which was partially granted.
01/09/2024	The appellant filed documents to cure its test claim filing.

¹¹ California Code of Regulations, title 2, section 1183.1(b).

¹² Government Code sections 17557, 17560, 17561.

¹³ Also referred to as MRP3.

¹⁴ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

02/23/2024	Commission staff sent a second notice to the appellant advising the test claim filing was duplicative and incomplete. ¹⁵
03/07/2024	The appellant filed a request for extension of time to file documents to cure its test claim filing, which was granted.
05/22/2024	Union City filed documents to cure its filing. ¹⁶ Commission staff deemed the Test Claim complete and issued Test Claim <i>California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07</i> for comment. ¹⁷
05/24/2024	The appellant filed documents to cure its test claim filing. ¹⁸
06/18/2024	The Executive Director sent a notice to the appellant rejecting the duplicate test claim filing. ¹⁹
06/28/2024	The appellant filed its Appeal of Executive Director Decision. ²⁰
07/18/2024	Commission staff issued the Draft Proposed Decision on the Appeal. ²¹

II. Background

The underlying facts are not in dispute. On June 30, 2023, Union City filed a test claim on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 (test claim permit), which was deemed incomplete. Later the same day, the appellant filed a test claim on the same permit, which was deemed duplicate and incomplete on October 11, 2023.²² The notice informed the appellant its filing was duplicative, but if Union City did not timely cure its test claim filing, then the appellant's test claim filing could be accepted if it was timely cured.²³ On May 22, 2024, Union City

¹⁵ Exhibit C, Second Notice of Duplicate and Incomplete Test Claim, issued February 23, 2024.

¹⁶ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*.

¹⁷ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, issued June 18, 2024.

¹⁸ Exhibit F, Appellant's Response to the Second Notice of Duplicate and Incomplete Test Claim Filing, filed May 24, 2024.

¹⁹ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

²⁰ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

²¹ Exhibit H, Draft Proposed Decision, issued July 18, 2024.

²² Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

²³ Exhibit B, Notice of Duplicate and Incomplete Test Claim, issued October 11, 2023.

cured its Test Claim, which pled Provision C.17.a. of the test claim permit,²⁴ it was deemed complete, and the Test Claim was issued for comment.²⁵ On May 24, 2024, the appellant filed documents to cure its test claim filing, which also pled Provision C.17.a. of the test claim permit.²⁶ On June 18, 2024, the Executive Director notified the appellant in writing that its test claim was duplicative of the Test Claim filed by Union City (22-TC-07) and rejected the test claim filing.²⁷

The appellant appeals the Executive Director's June 18, 2024 decision.²⁸ The basis for this appeal is limited to one section of the test claim permit (Provision C.17.a.) and whether Union City's test claim sufficiently pleads this provision or whether the provision impacts the appellant differently and thus, the appellant's test claim filing should be accepted and consolidated with Union City's Test Claim, 22-TC-07.

III. Appellant's Position

The appellant contends California Code of Regulations, title 2, section 1183.1 sets forth a two-step process for the receipt of test claim filings. "First, is the claim duplicative; and second, if so, whether the affected agencies are similarly situated. Neither of these factors are present here."²⁹

The appellant alleges its test claim filing does not duplicate Union City's Test Claim because the costs incurred by the appellant to comply with Provision C.17. *Discharges Associated with Unsheltered Homeless Populations* are much higher than those incurred by Union City:

San Jose's proposed Test Claim raises important issues related to the unhoused, the requirements of the Municipal Regional Stormwater Permit, and the permittees inability to fund this mandate. In support of the rejection, the Director cites to Union City's Test Claim for Provision C.17, seeking \$2,455.00. In sharp contrast, San Jose's claim for Provision C.17a.ii.(3) alone is \$19,022,757 for Fiscal Year 22-23. The dramatic difference in the magnitude of the claims make it apparent that San Jose's test claim does not duplicate Union City's and, in fact, Provision C.17

²⁴ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07.*

²⁵ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, issued June 18, 2024.

²⁶ Exhibit F, Appellant's Response to the Second Notice of Duplicate and Incomplete Test Claim Filing, filed May 24, 2024.

²⁷ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

²⁸ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

²⁹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 5.

impacts San José differently. San Jose’s claim should proceed and be consolidated with Union City’s for the Commission’s efficiency.³⁰

In addition to this financial disparity, the appellant asserts Union City’s Test Claim does not address the mandate to *implement* best management practices related to the unsheltered under Provision C.17.a.ii.3, “which Union City has yet to incur or calculate” and, thus, its test claim is more comprehensive than Union City’s Test Claim.³¹

The appellant contends even if its filing is duplicative of Union City’s Test Claim, it is not similarly situated to Union City because the order affects the appellant differently. First, the analysis of whether a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service “can differ when considering costs less than \$3,000.00 as compared to over \$19,000,00.00.”³² Second, the appellant argues it faces different challenges with its unsheltered homeless population: Union City’s estimated homeless population is 489, while the appellant’s homeless population is “6,200 individuals – over twelve times that of Union City’s -- approximately 70% of which are unsheltered.”³³ Finally, the appellant’s “work on *implementation* of best management practices demonstrates the difference in the two claims.”³⁴ The appellant has budgeted for and provided services referenced in the order including safe parking areas, mobile pump-out services, vouchers for RV sanitary sewage disposal, and cleaning of human waste or pickup programs.³⁵ In addition, the appellant provides Services, Outreach, Assistance and Resources (SOAR) programs and emergency interim shelter beds.³⁶ “In sharp contrast, Union City’s claim for the entire C.17a is \$2,455.00, less than three thousand dollars. Union City’s declarations demonstrate that the ‘The Permittees will incur additional costs throughout the MRP3 term to implement the best management practices.’”³⁷

The appellant concludes the “Commission should be informed by San Jose’s experience on this very important issue and its claim should proceed and be consolidated with Union City’s.”³⁸

The appellant did not file comments on the Draft Proposed Decision.

³⁰ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 2.

³¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 5.

³² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

³³ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

³⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7, emphasis in original.

³⁵ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

³⁶ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

³⁷ Exhibit A, Appeal of Executive Director, filed June 28, 2024, page 7.

³⁸ Exhibit A, Appeal of Executive Director, filed June 28, 2024, page 8.

IV. Discussion

Section 1181.1(c) of the Commission's regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present at the hearing. The Commission's decision shall be final and not subject to reconsideration. Within ten days of the Commission's decision, the executive director shall notify the appellant in writing of the decision.³⁹

A. This Appeal Was Timely Filed.

Commission regulation section 1181.1(c)(1) addresses executive director appeals and provides: "The appellant shall file the appeal in writing within 10 days of first being served written notice of the executive director's action or decision."⁴⁰ Here, the Executive Director rejected the appellant's test claim filing on June 18, 2024, and provided the appellant with written notice that same day.⁴¹ The appellant filed this appeal on June 28, 2024.⁴² Thus, the appellant filed its appeal within 10 days of the Executive Director's rejection. Accordingly, this appeal was timely filed.

B. The Executive Director's Rejection of the Appellant's Duplicate Test Claim Filing Is Consistent with the Statutes and Regulations Governing the Mandates Process and Is Correct as a Matter of Law.

1. The Statutes that Govern the Mandates Process Are Designed to Avoid Multiple Proceedings Addressing the Same Claim and Protect the Legal Rights and Interests of All Eligible Claimants.

The process for seeking reimbursement under article XIII B, section 6 of the California Constitution is identified in Government Code sections 17500, et seq. The governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."⁴³ Government Code section 17521 defines a "test claim" as the *first claim* filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. The test claim is required to identify the specific sections of statutes or executive orders alleged to contain a mandate, include a detailed description of the new activities and costs that arise from the mandate, any actual increased costs incurred by the claimant, and a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the

³⁹ California Code of Regulations, title 2, section 1181.1(c).

⁴⁰ California Code of Regulations, title 2, section 1181.1(c)(1).

⁴¹ Exhibit G, Notice of Rejection of Duplicate Test Claim, issued June 18, 2024.

⁴² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024.

⁴³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

fiscal year for which the claim was filed.⁴⁴ A test claim is only required to allege reimbursable costs exceeding \$1,000 for the Commission to take jurisdiction of the test claim.⁴⁵ Following the receipt of a test claim, the process is required to “[p]rovide for presentation of evidence by the claimant, the Department of Finance, and any other affected department or agency, and any other interested person.”⁴⁶ If the Commission approves the test claim, the Commission adopts parameters and guidelines “for reimbursement of any claims relating to the statute or executive order.”⁴⁷ “The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred.”⁴⁸ The adopted parameters and guidelines are sent to the State Controller’s Office, which then issues claiming instructions to assist all eligible local agencies and school districts in claiming costs to be reimbursed for the program.⁴⁹ “Issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the commission.”⁵⁰ Each eligible claimant may thereafter file initial and annual claims for reimbursement with the State Controller’s Office for all costs mandated by the state, as provided in the parameters and guidelines, which are subject to the Controller’s review and audit.⁵¹

Thus, the test claim process functions as a class action, where the Commission’s decision on the test claim “applies to all local governments and school districts in the state.”

An initial reimbursement claim filed by a local government or school district is known as a test claim. (Gov. Code, § 17521.) “The test claim process allows the claimant and other interested parties to present written evidence and testimony at a public hearing. [Citations.] Based on that evidence, the Commission must decide whether the challenged statute or executive order mandates a new program or increased level of service.” (*Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 808, 297 Cal.Rptr.3d 67, 514 P.3d 854 (CCCD).) “The Commission’s adjudication of the test claim ‘governs all subsequent claims based on the same statute.’ ” (*Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 553, fn. 4, 273 Cal.Rptr.3d 619; see also *SDUSD*, at p. 872, fn. 10, 16 Cal.Rptr.3d 466, 94 P.3d 589

⁴⁴ Government Code section 17553.

⁴⁵ Government Code section 17564.

⁴⁶ Government Code section 17553(a)(1).

⁴⁷ Government Code section 17557(a).

⁴⁸ Government Code section 17557(c).

⁴⁹ Government Code section 17558.

⁵⁰ Government Code section 17561(d)(1).

⁵¹ Government Code sections 17560, 17561(d)(1).

[“a ‘test claim is like a class action — the Commission’s decision applies to all [local governments and] school districts in the state’ ”].⁵²

The determination whether a statute or executive order imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 is a question of law, and the test claim process, providing for the filing of a single test claim, is intended to protect the legal rights and interests of all eligible local government claimants to the claim.⁵³

Consistent with the governing statutes, section 1183.1(b) of the Commission’s regulations provides “the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and no duplicate test claims will be accepted by the Commission.” The regulation further explains other similarly situated affected agencies may participate in the process by filing comments on the test claim and participating in the hearing on the matter:

[T]he first claim filed on a statute or executive order by a similarly situated claimant is the test claim and *no duplicate test claims will be accepted by the Commission*. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.⁵⁴

The regulations also provide a test claim may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- The claimants allege state-mandated costs result from the same statute or executive order;
- The claimants agree on all issues of the test claim; and,
- The claimants have designated one contact person to act as the sole representative for all claimants.⁵⁵

The Executive Director has the authority to reject a duplicate test claim filing because the Commission does not have jurisdiction to hear it: “Any test claim, or portion of a test

⁵² *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 630-631; see also, *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-333; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 86; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, footnote 10.

⁵³ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁵⁴ California Code of Regulations, title 2, section 1183.1(b), emphasis added.

⁵⁵ California Code of Regulations, title 2, section 1183.1(b).

claim, that the Commission lacks jurisdiction to hear for any reason, including that the test claim was not filed within the period of limitation required by subdivision (c) of this section, may be rejected or dismissed by the executive director with a written notice stating the reason therefor.”⁵⁶

If, however, a local agency or school district contends the test claim filing affects them differently than the test claimant – meaning their legal rights and interests are not protected by the test claim filing – then that local agency or school district may file a duplicate test claim on the same statutes or executive orders, “but must demonstrate how and why they are affected differently.”⁵⁷

2. The Appellant’s Filing Is Duplicative of Union City’s Test Claim (22-TC-07); the Appellant Is Not Affected Differently Than Any Other Local Government Permittee Who May File Reimbursement Claims with the State Controller’s Office if the Commission Approves Test Claim 22-TC-07; and the Appellant’s Legal Rights and Interests Are Fully Protected by the Processing of Test Claim 22-TC-07. Therefore, Rejection of the Appellant’s Filing Was Correct as a Matter of Law.

The appellant contends its filing on California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018 is not duplicative of Union City’s test claim filing on the same executive order because:

- Union City’s Test Claim (22-TC-07) does not address the mandate to *implement* best management practices related to the unsheltered under Provision C.17.a.ii.3.⁵⁸
- The costs incurred by the appellant are much higher than the costs alleged by Union City.⁵⁹

The appellant further contends even if its filing is duplicative of Union City’s Test Claim, the appellant is not similarly situated to Union City because Provision C.17.a. of Order No. R2-2022-0018 affects the appellant differently as follows:

- The analysis of whether a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service “can differ when considering costs less than \$3,000.00 as compared to over \$19,000,00.00.”⁶⁰
- The appellant faces different challenges with its unsheltered population: Union City’s estimated homeless population is 489, while appellant’s homeless

⁵⁶ California Code of Regulations, title 2, section 1183.1(g).

⁵⁷ California Code of Regulations, title 2, section 1183.1(b).

⁵⁸ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 7-8.

⁵⁹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

⁶⁰ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

population is “6,200 individuals – over twelve times that of Union City’s -- approximately 70% of which are unsheltered.”⁶¹

- Appellant’s “work on *implementation* of best management practices demonstrates the difference in the two claims.”⁶² The appellant has budgeted for and provided services referenced in the order including safe parking areas, mobile pump-out services, vouchers for RV sanitary sewage disposal, and cleaning of human waste or pickup programs. In addition, appellant provides Services, Outreach, Assistance and Resources (SOAR) programs and emergency interim shelter beds.⁶³ “In sharp contrast, Union City’s claim for the entire C.17a is \$2,455.00, less than three thousand dollars.”⁶⁴

Thus, the appellant is essentially alleging the Union City Test Claim (22-TC-07) does not request reimbursement to *implement* best management practices related to the unsheltered in accordance with Provision C.17.a.ii.3., and its homeless population and the costs incurred to comply with Provision C.17.a. including implementation are much larger than Union City’s population and costs, which will affect the appellant’s ability to levy service charges, fees, or assessments sufficient to cover the costs to comply with Provision C.17.a.

The Commission finds the Executive Director’s decision to reject the appellant’s duplicative test claim is correct as a matter of law.

Union City’s Test Claim (22-TC-07) was the first claim filed on the test claim permit, a stormwater permit issued by the San Francisco Bay Regional Water Quality Control Board to many local governments including counties, cities, and districts in the following regions: Alameda, Contra Costa, Santa Clara, San Mateo, Fairfield, and Vallejo.⁶⁵ Test Claim 22-TC-07 pleads all of Provision C.17.a., as noted on the Test Claim form (which expressly identifies Provision C.17.a.), in the narrative, and in the declarations supporting the claim.⁶⁶ Provision C.17.a. is a lengthy provision, generally addressing discharges into the MS4 associated with the homeless population, and requires the development and submission of a best management practices report and the development and submission of a map identifying approximate locations of unsheltered

⁶¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7, emphasis in original.

⁶³ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶⁴ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 7.

⁶⁵ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, page 2.

⁶⁶ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 2, 34, 58, 111.

homeless populations.⁶⁷ Provision C.17.a. contains three groups of paragraphs identified as “task description” (C.17.a.i.), “implementation level” (C.17.a.ii.), and “reporting” (C.17.a.iii.).⁶⁸ Provision C.17.a.ii.3. (implementation level) provides, in pertinent part: “Each Permittee shall identify *and implement* appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts.”⁶⁹ Union City’s test claim narrative states the following:

7. Discharges Associated with Unsheltered Homeless Populations

New Requirement. Provision C.17.a of the MRP3 requires Permittees to collectively develop and submit a best management practice report that identifies practices to address non-storm water discharges associated with homelessness into MS4s that impact water quality and specific milestones for reducing such discharges. (*MRP3 at C.17-1 – 3*, Section 7 at S7-0218-0220.) Provision C.17.a of the MRP3 also requires Permittees to report on the programmatic efforts being implemented within Permittee’s jurisdiction, or at the countywide or regional level, to address MS4 discharges associated with homelessness. (*Id.*) The MRP3 Fact Sheet acknowledges these are new programs. (MRP3 Fact Sheet at A-38, Section 7 at S7-0297.)

Permittees are required to develop and submit a regional best management practice report to identify control measures to address non-stormwater discharges associated with unsheltered homeless populations and identify milestones to reduce such discharges. To meet this new MRP3 requirement, the Program collaborated with the other four countywide programs on a regional project to develop the required best management practice report, which was submitted with each Permittee’s Fiscal Year 22/23 annual report. (Mathews Decl., ¶9.j.)

Additionally, each Permittee is required to submit a map identifying, the approximate locations of unsheltered homeless populations, including encampments and other areas where other unsheltered homeless people live relative to storm drains, creeks, and flood control channels. To support its members, the Program worked with County officials to obtain the required geo-located point in time count data, developed an approach for creating the maps, and updated its GIS system to produce the required maps for each of its members. (*Id.*)

⁶⁷ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 125-127.

⁶⁸ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 125-127.

⁶⁹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, page 126.

The City submitted the maps with its Fiscal Year 22/23 annual report. The Union City Fiscal Year 22/23 Union City costs for new Provision C.17 programs were \$2,455. (Mathews Decl., ¶ 10; Azim Decl., ¶ 8.g.)⁷⁰

The declaration of Sandra Mathews, Vice President of Larry Walker Associates and project manager for the Alameda Countywide Clean Water Program, filed in support of the Test Claim, adds the following: “The Permittees will incur additional costs throughout the MRP3 term *to implement the best management practices.*”⁷¹ The declaration of Farooq Azim, City Engineer, includes the same statement verbatim.⁷²

Thus, all of Provision C.17.a., including Provision C.17.a.ii.3 regarding the implementation of the best management practices, are properly pled in Union City’s Test Claim (22-TC-07). The appellant’s filing, also pleading all of Provision C.17.a., is duplicative of Union City’s Test Claim.⁷³ On June 18, 2024, Commission staff issued Test Claim 22-TC-07 for comment to all parties, interested parties, and interested persons, identifying Provision C.17.a. as included in the test claim filing, and all parties, interested parties, and interested persons have the ability to participate in the hearing process for that Test Claim.⁷⁴ In this case, the appellant as a copermitee, is an interested party to 22-TC-07 since it will be eligible to submit reimbursement claims if that claim is approved and therefore has a pecuniary interest in the matter.

The hearing on 22-TC-07 will determine, among other things, whether Provision C.17.a. imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6, which is a question of law applicable to all eligible local government claimants (here, any copermitees with increased costs mandated by the state).⁷⁵ The following mandate elements must be met to require reimbursement under article XIII B, section 6 with respect to all of Provision C.17.a.:

⁷⁰ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, page 34, emphasis added.

⁷¹ Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, pages 104, 111, emphasis added.

⁷² Exhibit D, Excerpt from Test Claim, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, page 58.

⁷³ Exhibit F, Appellant’s Response to the Second Notice of Duplicate and Incomplete Test Claim, filed May 24, 2024.

⁷⁴ Exhibit E, Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date, *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2022-0018, 22-TC-07*, issued June 18, 2024.

⁷⁵ *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, footnote 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁷⁶
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁷⁷
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁷⁸
4. The mandated activity results in the local agency or school district incurring increased costs of at least \$1,000, within the meaning of sections 17514 and 17564. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁷⁹

If the Commission finds Provision C.17.a. of the test claim permit imposes a reimbursable state-mandated program as a matter of law, parameters and guidelines will be adopted, and all eligible local government copermitees, including the appellant, will be able to file reimbursement claims with the State Controller’s Office for their costs mandated by the state.⁸⁰

Moreover, the appellant’s legal rights and interests are protected by Union City’s Test Claim, even if its costs to comply with Provision C.17.a. are higher. The appellant asserts the test claim permit affects it differently because the appellant has a larger homeless population, has incurred significantly higher costs than Union City in implementing the test claim permit, and its ability to levy fees will be affected.⁸¹ The appellant concludes the “Commission should be informed by San Jose’s experience on

⁷⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁷⁷ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

⁷⁸ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁷⁹ *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; Government Code sections 17514 and 17556.

⁸⁰ Government Code sections 17557, 17560, 17561.

⁸¹ Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, pages 3, 7.

this very important issue and its claim should proceed and consolidated with Union City's."⁸²

However, the size of the homeless population and higher costs experienced by the appellant are not relevant at the test claim stage of the proceedings. Increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution.⁸³ Rather, as explained above, the Commission is required to determine if Provision C.17.a. imposes new requirements on local government, mandated by the state, that constitute a new program or higher level of service, and result in costs mandated by the state of at least \$1,000 in accordance with Government Code sections 17514, 17556, and 17564.

In addition, Government Code section 17556(d) provides the Commission "shall not find costs mandated by the state, as defined in Section 17514" if the Commission finds "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." The fee authority issue is one of law, and not one of fact, and depends only on whether local government has "authority, i.e., the right or power, to levy fees," and other factors such as economic evidence that may make the exercise of that authority impractical or undesirable are not relevant.⁸⁴

Moreover, the Commission's regulations provide ample opportunity for the appellant, as a similarly situated affected agency, to participate in the Commission's determination of Test Claim 22-TC-07 without accepting and consolidating its filing with Union City's Test Claim. Section 1183.1(b) of the Commission's regulations expressly provides:

Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.⁸⁵

Thus, the appellant is not prevented from providing the Commission with written comments, evidence, and testimony of a larger homeless population and the higher costs it has incurred and can inform the Commission's decision through the test claim hearing process. All comments and evidence provided by interested parties are included in the administrative record for the matter.

⁸² Exhibit A, Appeal of Executive Director Decision, filed June 28, 2024, page 8.

⁸³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

⁸⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382; *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564.

⁸⁵ California Code of Regulations, title 2, section 1183.1(b).

Accordingly, the appellant has not demonstrated it is not similarly situated to Union City, nor that the test claim permit affects it differently. Thus, the Executive Director's rejection of appellant's filing is correct as a matter of law.

V. Conclusion

Based on the foregoing analysis, the Commission upholds the Executive Director's decision to reject the appellant's test claim filing as duplicative and denies the appeal.

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.

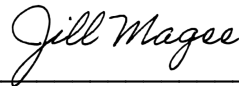
On September 30, 2024, I served the:

- **Current Mailing List dated September 26, 2024**
- **Decision on Appeal of Executive Director Decision adopted September 27, 2024**

Rejection of Duplicate Test Claim Filing, 23-AEDD-01
City of San Jose, Appellant

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 September 30, 2024 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/26/24

Claim Number: 23-AEDD-01

Matter: Appeal of Executive Director Decision

Claimant: City of San Jose

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.)

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@cnda.net

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzafopoulos@cityofstheleena.org

Jonathan Borrego, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3065
citymanager@oceansideca.org

Serena Bubenheim, Assistant Chief Financial Officer, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5630
serena.bubenheim@surfcity-hb.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Shelby Burguan, Budget Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3085
sburguan@newportbeachca.gov

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Sheri Chapman, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8267
schapman@calcities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@munil.com

Margaret Demauro, Finance Director, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307

Phone: (760) 240-7000
mdemauro@applevalley.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Nora Frimann, *City Attorney, City of San Jose*
Claimant Representative
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
nora.frimann@sanjoseca.gov

Juliana Gmur, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Heather Halsey, *Executive Director, Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, *Principal Program Budget Analyst, Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, *Associate Accounting Analyst, State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, *Director, Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, *Supervisor, State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, *Fiscal Specialist, City of Newport Beach*
Revenue Division, 100 Civic Center Drive, Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, *Bureau Chief for Audits, State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Jill Moya, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3887
jmoya@oceansideca.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Kaleb Neufeld, Assistant Controller, *City of Fresno*
2600 Fresno Street, Fresno, CA 93721
Phone: (559) 621-2489
Kaleb.Neufeld@fresno.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Cindy Sconce, Director, *Government Consulting Partners*
5016 Brower Court, Granite Bay, CA 95746
Phone: (916) 276-8807
cindysconcegc@gmail.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, Senior Legal Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Paul Steenhausen, Principal Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, , Sacramento, CA 95814
Phone: (916) 319-8303
Paul.Steenhausen@lao.ca.gov

Julie Testa, Vice Mayor, *City of Pleasanton*
123 Main Street PO Box520, Pleasanton, CA 94566

Phone: (925) 872-6517
Jtesta@cityofpleasantonca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
Claimant Representative
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700,
Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov