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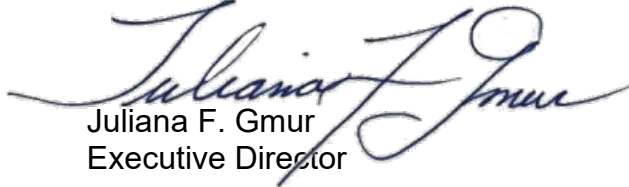
Mr. Joe Stephenshaw, Director
Department of Finance
State Capitol, Room 1145
Sacramento, CA 95814

Re: Commission on State Mandates: Report to the Director of Finance on
Workload Levels and Backlog Reduction Plan

Dear Mr. Stephenshaw:

Enclosed is the Commission on State Mandates' *2025 Report to the Director of Finance on Workload Levels and Backlog Reduction Plan*. This report satisfies the statutory requirement to submit an annual *Report to the Director of the Department of Finance*, in accordance with Provision 2 of Item 8885-001-0001 of Statutes 2025, chapter 25 (SB 101, Wiener).

Very truly yours,



Juliana F. Gmur
Executive Director

STATE *of* CALIFORNIA
**COMMISSION ON STATE
MANDATES**



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DIRECTOR OF FINANCE: 2025 REPORT ON WORKLOAD LEVELS AND BACKLOG REDUCTION PLAN

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Executive Summary

This report provides information on the Commission on State Mandates' (Commission's) workload levels and backlog reduction plan on a fiscal year basis.

A. Statutory Reporting Requirement

The 2025 Budget Act requires the Commission to report to the Director of Finance on workload levels and backlog. Specifically, it states:

The Commission on State Mandates shall, on or before September 15, 2015, and annually thereafter, submit to the Director of Finance a report identifying the workload levels and any backlog for the staff of the Commission.¹

This report satisfies that statutory reporting requirement.

B. Historic Reasons for the Backlog

The backlog resulted from several factors:

- 1984 – When the Legislature created the Commission, the Government Code allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations.
- 2002 – Statutes 2002, chapter 1124 imposed a three-year statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and executive orders going back to 1975, resulting in 51 new test claims filed in 2002-2003, and 23 test claims filed in 2003-2004, which represented a 50 percent increase over the prior five-year average.
- From fiscal year 2002-2003 to 2008-2009 the Commission's position authority was reduced from 17 PYs to 10.5 PYs.²
- 2004 – AB 2856 imposed a new statute of limitations of one year from the effective date of a statute or executive order, or the date of first incurring costs, resulting in 23 test claims being filed in the 2003-2004 fiscal year.
- 2004-2009 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claim decisions, which the Commission did. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed the Commission to set several reconsideration decisions aside.
- 2010 to present – *National Pollutant Discharge Elimination System (NPDES) Permit Claims*. Prior to 2010, Government Code section 17516(c) defined "executive orders" to exclude any order, plan, or regulation issued by the State Water

¹ Statutes 2025, chapter 4 (SB 101, Wiener), Item 8885-001-0001, Provision 2.

² Beginning fiscal year 2013-2014 the Commission's staff was increased by two PYs to 12.5 and beginning fiscal year 2019-2020 was increased by one-half PY to 13, and beginning fiscal year 2022-2023, was increased by three PYs to 16.

Resources Control Board or any regional water quality control board. Therefore, NPDES permits were not subject to mandate determination. The courts ruled that Government Code section 17516(c) was unconstitutional and local agencies have since filed 47 NPDES permit test claims. In 2010, the Commission decided five of the first of these claims filed. However, litigation on those decisions addressing the threshold issue of whether NPDES permits impose state or federal mandates, was pending in the courts from June 2010 to October 2022 and the then remaining claims were placed on inactive status. During that time, one of the inactive claims was withdrawn because it was a duplicate claim. Since fiscal year 2015-2016, local agencies have filed 28 additional NPDES test claims and one previous NPDES Decision was remanded by the courts for reconsideration by the Commission.

In fiscal year 2020-2021, one of the new NPDES test claims was settled and withdrawn. In fiscal year 2021-2022, one of the NPDES claims was dismissed because it was not timely filed. In fiscal year 2022-2023, one NPDES claim was partially approved by the Commission, and one of the previously decided NPDES claims was remanded by the court and the Decision was amended. In fiscal year 2023-2024, three NPDES claims were partially approved by the Commission. In fiscal year 2024-2025, three NPDES claims were partially approved by the Commission.

As of July 1, 2025, 32 NPDES test claims are pending and tentatively set for hearing and constitute a backlog of test claims. These matters raise complex issues of law and fact and the records for each of them can reach up to 200,000 pages. As a result, these claims are taking longer to complete than typical test claims filed on a statute or regulation. All pending stormwater litigation resolved in 2022-2023, but we anticipate additional stormwater litigation on issues not yet addressed by the courts.

C. Staffing and Workload

For the 2024-2025 fiscal year, the Commission had 16 positions. However, the Commission experienced the loss of funding for an Attorney III position and turnover in two key positions: the Executive Director and the Attorney IV position.

During the 2024-2025 fiscal year, the Commission completed one order to set aside a test claim decision, seven test claim decisions, including the one remanded to the Commission for reconsideration by the court, seven decisions and parameters and guidelines, five statewide cost estimates (SCEs), one incorrect reduction claim (IRC), and one appeal of executive director decision (AEDD), for a total of 22 matters heard by the Commission, in addition to completing substantial work on active litigation matters, administrative duties, and other workload. The Commission had two cases pending in the courts, which required significant staff time to brief and argue. The matters being litigated in 2024-2025 addressed complex issues regarding constitutional law, and issues of jurisdiction and procedure and some were issues of first impression. Additionally, Commission staff continued to focus its efforts on working on draft proposed decisions for the stormwater claims. This is a significant increase in productivity over prior years that may seem at odds with the staffing issues identified. This is because mandates claims, particularly stormwater claims, can take many months or even years to complete and therefore much of the productivity accounted for

in the 2024-2025 fiscal year can be attributed to work performed in the 2023-2024 fiscal year and earlier fiscal years but not completed until heard in 2024-2025.

As of July 1, 2025, the Commission has a pending caseload of 38 test claims,³ one parameters and guidelines,⁴ and six SCEs. These items have statutory deadlines for completion and the Commission prioritizes them over other items.

Also currently pending is one IRC which was filed in fiscal year 2024-2025 and is set for hearing on December 5, 2025. There are no parameters and guidelines amendments (PGA) or requests for mandate redetermination (MR) currently pending. Unlike test claims, parameters and guidelines, and SCEs, IRCs and PGAs do not have a statutory deadline for completion, but the Commission must hear them within a reasonable amount of time from the date of filing.⁵

D. Backlog Reduction Plan

As of July 1, 2025, there are 38 test claims pending. All of the currently pending test claims are local agency claims, 32 of which are regarding NPDES permits.

The 32 pending NPDES test claims are currently set or tentatively set for hearing between September 26, 2025 and December 3, 2027. These claims are large, complex, raise several legal issues, some of which have not yet been litigated, and are not suited for a speedy determination. The six pending non-NPDES local agency test claims were all filed in fiscal year 2024-2025 and are set and tentatively set for hearing between July 25, 2025 and January 23, 2026.

³ 38 of the pending claims are local agency claims, 32 of which are regarding National Pollutant Discharge Elimination System (NPDES) permits. There are no school district test claims currently pending.

⁴ For these parameters and guidelines, the parties filed a Stipulation of the Parties to Waive Procedural Requirements on October 2, 2023, to allow time for the claimant to develop a reasonable reimbursement methodology (RRM) and the State parties to comment on the proposal. On February 20, 2024, over 80,000 pages of supporting documents in 14 volumes for the RRM were filed by the claimants which required review until March 29, 2024 to ensure that the filing was in substantial compliance with the Commission's filing requirements. As a result, the six-month comment period provided by the Stipulation was extended and the tentative hearing date was postponed. Since then, the State Water Resources Control Board and the San Diego Regional Water Quality Control Board have filed two requests for extension, which were granted; Commission staff issued a Revised Draft Proposed Decision and Parameters and Guidelines for comment on March 20, 2025; and the claimants have filed two requests for extension and postponement of hearing, which were granted. These Parameters and Guidelines are now set for hearing on December 5, 2025.

⁵ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

The single pending parameters and guidelines is proposed to include a reasonable reimbursement methodology, which was subject to an extended comment period by stipulation of the parties, and is set for hearing on December 5, 2025.

The six pending SCEs are tentatively set for hearing between July 25, 2025 and March 27, 2026. SCEs are now tentatively set for hearing at the earliest possible date after the Commission approves the test claim, adopts the parameters and guidelines, and receives claims data from the Office of the State Controller (Controller). The parameters and guidelines and SCE caseloads are not backlogged.

With regard to MRs, there are zero pending as of July 1, 2025. Therefore, there is no MR backlog.

Additionally, there are zero PGAs pending, therefore, there is no PGA backlog.

Finally, as of July 1, 2025, there is currently one IRC pending which was filed in fiscal year 2024-2025 and is tentatively set for hearing on December 5, 2025. Therefore, there is no IRC backlog.

Based on the above, the only backlogged matters remaining are the 38 test claims and this is primarily due to the NPDES permit test claims being complex and voluminous.

Because there is a statutory duty to adopt an SCE within 12-18 months of the filing of a test claim, test claims, parameters and guidelines, and SCEs take priority over all other matters. The next priority for the Commission is resolution of MRs and PGAs, as these have a material effect on all eligible claimants for the program and for the state. IRCs have the lowest priority, since they affect only one local agency and have no statutory deadline for hearing.

Hearing IRCs with crosscutting issues first is one way that the Commission has helped to spur informal resolution of these claims between the claimants and the State Controller's Office (Controller). In 2015, there was a backlog of 41 IRCs and as of July 1, 2025, there is only one IRC pending. Though most IRCs are not suitable for consolidation, since they pose unique issues of fact or law and so must be analyzed individually, to the extent that there are cross-cutting issues, staff is analyzing and presenting them together for hearing, as much as is feasible, for purposes of efficiency and consistency.

Based on the tentatively scheduled hearing dates for the single currently pending IRC, the Commission will likely hear IRCs filed in 2025-2026 within one year of the filing date. This represents a significant improvement in speediness over prior years. However, because IRCs have the lowest priority for hearing out of all Commission matters, scheduling may be pushed to a later date if other items with higher priority, such as test claims, MRs, and PGAs are filed or if there is a temporary (such as staff turnover or furloughs) or permanent reduction in staff. Whether the completion of IRCs takes less time or more time than the staff expectation of approximately December 5, 2025 and within approximately one-year for those IRCs filed this fiscal year, will depend on a variety of factors discussed further in this report.

The temporary elimination of the test claim backlog in 2014-2015 (while the NPDES claims were on inactive status) enabled staff to redirect its efforts to the IRC backlog, thereby eliminating it, and has allowed new (non-NPDES) test claim filings to be

immediately analyzed and set for hearing upon closure of the record. Beginning in the 2013-2014 fiscal year, Commission staff started tracking how long it takes to complete each test claim, excluding the NPDES permit claims, from the filing date to the adoption of the SCE. Test claims that are amended, severed, or consolidated restart the clock for the statutory deadline.⁶ Additionally, pursuant to the Commission's regulations, extensions of time, postponements, continuances, and time for preparing joint reasonable reimbursement methodologies (joint RRM)s requested by the parties do not count against the statutory deadline.⁷ Therefore, to improve transparency with regard to how the mandates process is working, Commission staff has also begun tracking the time for delays requested by the parties and deducting that time from the time it takes to adopt an SCE once a test claim is filed.⁸ For non-NPDES test claims filed since July 1, 2013,⁹ the Commission has been adopting test claim decisions within an average of 238 days (not including the average of 57 days tolled due to incomplete filings or 78 days tolled due to requests for extension or postponement) and SCEs within an average of 441 days from the filing of the test claim (not including the average of 298 days tolled) from the date of the test claim filing.¹⁰

E. Administrative Workload

The Commission must perform all of the general duties of state agencies relating to human resources, budget, accounting, procurement, and maintaining and providing access to public records. In addition, Commission staff must also fulfill the specific statutory duty of the executive director to "keep a full and true record of all proceedings of the Commission . . ." pursuant to Government Code 17530.

During the 2024-2025 fiscal year, the Commission's only Information Technology Specialist I and the Assistant Executive Director - Administration were new in their positions. In addition, the Executive Director and the Attorney IV positions had turnover.

⁶ Title 2, California Code of Regulations, Section 1183.18.

⁷ Title 2, California Code of Regulations, Section 1183.18.

⁸ See Exhibit A.

⁹ Matters reconsidered on remand by the court are deemed filed on the effective date of the Commission's adoption of the Order to Set Aside the Decision.

¹⁰ The following days are tolled and do not count toward the date on which a statewide cost estimate must be adopted by the Commission: days for extensions of time and postponements of hearings (2 CCR § 1183.18(a)(2)); days between a claimant's submission of incomplete information, Commission staff's return of the incomplete information, and the date on which the Commission receives complete information from the claimant (2 CCR § 1183.18(a)(3)); for test claims that are amended, severed, or consolidated and are deemed filed on the effective date of the last amendment, severance, or consolidation unless stipulated to by the parties and approved by the executive director (2 CCR § 1183.18(a)(7)); and days between the effective date of the parameters and guidelines and the date initial reimbursement claims are due to the Office of the State Controller (2 CCR § 1183.18(a)(8)).

Remaining IT and Procurement staff worked to back-up the duties of the IT position, and management worked to back up the vacant Executive Director and Attorney IV positions, including providing first level supervision of administrative staff, and keeping up with general human resources, information technology, budget, accounting, procurement, and recruitment needs of the Commission in addition to the core mission program work of preparing analyses on mandates issues for the Commission to hear and decide. Commission staff also onboarded the Executive Director and the Attorney IV. Several plans, policies, protocols, and scheduling documents, pertaining to telework, returning to office two days per week, and health and safety measures, were prepared, adopted, and implemented as conditions, requirements, and guidance shifted. Doing so involved significant time and effort from all Commission staff. Finally, to comply with Budget Letter (BL) 24-24 regarding Government Efficiencies Reduction, Commission staff had to relinquish funding for an Attorney III position. The position remains on the books, but a BCP will be required to reestablish the funding.

2025 REPORT TO FINANCE AND BACKLOG REDUCTION PLAN

I. Background

A. Constitutional and Statutory Requirements for the Mandate Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. Because the Legislature found that the State Board of Control had failed to “adequately and consistently resolve complex legal questions involved in the determination of state-mandated costs” it created the Commission to succeed the Board of Control in making determinations on whether new statutes or executive orders are state-mandated programs within the meaning of article XIII B, section 6.¹¹ Specifically, the Commission was established to “relieve unnecessary congestion of the judicial system . . .,” render sound quasi-judicial decisions, and provide an effective means of resolving disputes over the existence of state-mandated local programs.¹²

The Commission’s process provides the sole and exclusive procedure for local governments (claimants, which may include cities, counties, special districts, K-12 school districts, and community college districts) to seek reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution.¹³ The Commission is required to hear and decide claims filed by local governments that they are entitled to be reimbursed by the state for costs mandated by the state.¹⁴

Under the mandates process, local governments may file “test claims” with the Commission alleging that statutes, regulations, and executive orders enacted by the Governor, the Legislature, or state agencies, impose new programs or increased levels of service upon local entities. A “test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state.¹⁵

State law requires the Commission to adopt procedures to ensure that it adopts a statewide cost estimate (SCE) within 12 to 18 months after receipt of a test claim, when the Commission determines that a reimbursable mandate exists.¹⁶ Prior to adopting an SCE for a mandated program, the Commission must first hear and decide the test claim and the parameters and guidelines, which may include reasonable reimbursement methodologies (RRMs) pursuant to Government Code sections 17557 (RRMs in

¹¹ Government Code section 17500.

¹² Government Code section 17500.

¹³ Government Code section 17552.

¹⁴ Government Code section 17551.

¹⁵ Government Code section 17521.

¹⁶ Government Code section 17553.

proposed parameters and guidelines) or 17557.1 (joint RRM). The parameters and guidelines is the document that specifies the activities that are reimbursable, including the scope of the activities and how local government may claim reimbursement. Without specific understanding of the nature and scope of the reimbursable activities, any cost estimate would be highly speculative. Based on the above, the statute requires the Commission to adopt test claim decision, parameters and guidelines, and SCE within 12 to 18 months of a test claim filing.

For RRMs proposed for inclusion in the parameters and guidelines pursuant to Government Code sections 17557 and 17518.5, the Commission is required to make additional factual determinations, based on substantial evidence in the record, that the proposed formula or unit cost reasonably reimburses all eligible claimants' actual costs mandated by the state. The proposed RRM must be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If the Commission makes these findings and adopts an RRM in the parameters and guidelines, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred.

The Commission's adoption of an RRM in parameters and guidelines pursuant to Government Code sections 17557 or 17518.5 streamlines the claiming process and reduces or eliminates auditing issues on reimbursement claims filed with the Controller, and thus would presumably also reduce the number of incorrect reduction claims (IRCs) filed with the Commission. The Legislative Analyst's Office (LAO) originally proposed the RRM process for these reasons. However, the process of adopting an RRM pursuant to Government Code 17557 when adopted in the parameters and guidelines increases the workload of the Commission on the front end, by requiring the additional factual finding that the proposal reasonably reimburses all eligible claimants' actual costs mandated by the state as required by article XIII B, section 6 of the California Constitution. Analyzing such proposals requires significant staff time, in some instances more time than was required for the underlying test claim analysis.

As of July 1, 2025, the Commission has adopted five, denied five, and dismissed four withdrawn RRM proposals submitted pursuant to 17557 — most during fiscal years 2013-2014 through 2015-2016. However, Statutes 2016, Chapter 31, amended Government Code section 17518.5 to require that RRMs "based in whole or in part on costs included in reimbursement claims submitted to the Controller, only use costs that have been audited by the Controller" and no RRMs have been proposed since. This language requiring audited costs sunsetted effective July 1, 2019 and following the issue of the Draft Proposed Decision and Parameters and Guidelines on July 27, 2023, the claimant has proposed to add an RRM for inclusion in parameters and guidelines and has requested and received an extension of time to prepare the proposed RRM for *San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly*

mandated activities, and L.1.a.(3)-(6), 07-TC-09-R. Following the filing of over 80,000 pages of supporting documents in 14 volumes for the RRM, Commission staff issued the Revised Draft Proposed Decision on March 20, 2025 and set the matter for hearing on May 23, 2025. Upon the request of the claimant, this matter was postponed and is currently set for hearing on December 5, 2025.

The joint RRM process, under Government Code sections 17557.1 and 17557.2, allows the claimant and the Department of Finance (Finance), with broad support from a wide range of affected local governments, to jointly develop an RRM and statewide estimate of costs¹⁷ for adoption by the Commission. The parties are required to notify the Commission of their intent to proceed under the joint RRM process within 30 days of the adoption of the test claim decision. To date, the Commission has only ever approved one joint RRM, and one extension of that joint RRM.

The Commission is also required to hear and decide other claims that affect the workload of the Commission. These include: 1) IRCs filed by local governments alleging that the Controller has incorrectly reduced reimbursements; 2) mandate redeterminations (MRs); 3) proposed amendments to previously adopted parameters and guidelines (PGAs); and 4) review of the Controller's claiming instructions. There is no statutory timeframe for completing IRCs, MRs, PGAs, or the review of claiming instructions. However, an administrative agency is required to hold a hearing within a reasonable time when the statutes governing the process do not fix a time limit to conduct the hearing.¹⁸ The ability of the Commission to hear and decide these matters within a reasonable timeframe is affected by the number of pending matters in the initial mandate determination process, as well as pending litigation and current staffing levels.

B. Historic Reasons for the Backlog

The backlog resulted from several factors:

- 1984 – When the Legislature created the Commission, the Government Code allowed the filing of test claims on statutes and regulations going back to 1975, with no statute of limitations.
- 2002 – Statutes 2002, chapter 1124 imposed a three-year statute of limitations for the filing of test claims. It also provided a one-year grandfather clause to file test claims on statutes and executive orders going back to 1975, resulting in 51 new test claims filed in 2002-2003, and 23 test claims filed in 2003-2004, which represented a 50 percent increase over the prior five-year average.

¹⁷ Not to be confused with a statewide cost estimate (SCE).

¹⁸ *Horner v. Board of Trustees of Excelsior Union High School District of Los Angeles* (1964) 61 Cal.2d 79, 86.

- From fiscal year 2002-2003 to 2008-2009 the Commission's position authority was reduced from a high of 17 PYs to a low of 10.5 PYs.¹⁹
- 2004 – AB 2856 imposed a new statute of limitations of one year from the effective date of a statute or executive order, or the date of first incurring costs, resulting in 23 test claims being filed in the 2003-2004 fiscal year.
- 2004-2009 – Through AB 2851, 2855, 138, and 1805 and SB 512 and 1895, the Legislature directed the Commission to reconsider 14 test claim decisions, which the Commission did. In 2009, the Third District Court of Appeal found the reconsideration statutes unconstitutional and directed the Commission to set several reconsideration decisions aside.
- 2010 to present – *National Pollutant Discharge Elimination System (NPDES) Permit Claims*. Prior to 2010, Government Code section 17516(c) defined "executive orders" to exclude any order, plan, or regulation issued by the State Water Resources Control Board or any regional water quality control board, thus prohibiting test claims on NPDES permits issued by the state or regional boards. Government Code section 17516(c) was ruled unconstitutional by the courts and, local agencies have since filed 47 NPDES permit test claims. The Commission decided five of these claims and one of these claims was withdrawn because it was duplicative. However, litigation on those decisions (a Los Angeles permit case²⁰ and a San Diego permit case²¹), addressing the threshold issue of whether NPDES permits impose a state or a federal mandate, whether the activities required by the permits impose a new program or higher level of service and, if so, whether the claimants have fee authority sufficient to fund the costs of the program, among other issues, was pending in the courts from June 2010 to October 2022 and, as a result, the remaining NPDES claims were placed on inactive status for several years.

The 32 remaining NPDES test claims have now been tentatively set for hearing, thus creating a new backlog of test claims. These matters raise complex issues of law and fact and the records for each of them can reach up to 200,000 pages. In addition, several of the issues raised are currently being litigated, as discussed above. As a result, they will take longer to complete than typical test claims.

¹⁹ Beginning fiscal year 2013-2014 the Commission's staff was increased by two PYs to 12.5, beginning fiscal year 2019-2020 was increased by one half PY to 13, and beginning fiscal year 2022-2023, was increased by three PYs to 16.

²⁰ *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 and on appeal, *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546.

²¹ *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661 and on appeal, *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535.

II. Commission Workload Considerations

A. Workload Completed in 2024-2025

In 2024-2025, the Commission completed one Order to Set Aside a Test Claim Decision, seven Test Claims, including one that was remanded to the Commission for reconsideration by the court, seven Parameters and Guidelines, five SCEs, zero PGAs, one Appeal of Executive Director Decision, and one IRC. The Commission also had two cases pending in the courts during 2024-2025 that required significant staff time to brief and argue. Many of the claims completed and litigation pending in 2024-2025 addressed complex issues regarding constitutional law and issues of procedure and some of these issues were issues of first impression.

B. Position Authority

Like many state agencies, during the long-term budget crisis of 2001-2002 through 2012-2013, Commission staffing levels decreased significantly. This was a significant contributor to the Commission's backlog. In the 2001-2002 to 2003-2004 budget years, Commission staff was drastically reduced from a high of 17 positions to a low of 9.625 positions. Around the same time, Statutes 2002, chapter 1124 imposed a statute of limitation for filing a test claim and included a grandfather clause, allowing the filing of test claims on statutes, regulations and executive orders dating back to 1975 until September 30, 2003. Thus, a great number of large and complex test claims were filed without sufficient staff to analyze them resulting in a significant backlog of claims. In 2006, the Legislature provided the Commission with three limited-term positions to eliminate the backlog. Since those positions were very difficult to fill, one was eliminated and two were made permanent in 2007. However, as a result of budget cuts in 2008 and 2009, the two new permanent positions were eliminated. Finally, for most of the time from 2008-2009 to 2012-2013, Commission staff, like most state employees, were subject to furlough and personal leave programs, which effectively reduced personnel hours by an additional five to fifteen percent throughout those years.

According to the Bureau of State Audits (BSA): "despite the State's budget issues, cutting staff who determine state mandates has been shortsighted. Specifically, such actions over the last few years have contributed to delays related to stalled test claims that allow the buildup of millions of dollars of potential claims that the State is constitutionally required to reimburse."²²

Based on these facts, the Commission submitted a budget change proposal for 2013-2014, which was approved and established two new positions: an attorney III and a senior legal analyst. Based on another approved budget change proposal for 2018-2019, beginning July 1, 2019, the Commission had a half-time associate governmental program analyst position to perform the Commission's human resources-related duties, raising the total PYs to 13. And, beginning January 24, 2020, the Commission reclassified one of three attorney III positions to an attorney IV position to help the Commission to retain attorneys with mandate law experience, which is specialized and which most non-Commission attorneys lack. Due to the lack of

²² California State Auditor Report 2009-501, page 22.

administrative staff, however, supervisors and managers have been required to personally perform staff-level administrative duties which has slowed down the mandate determination process. As a result, the Department of Finance and the Legislature approved a budget change proposal for the 2020-2021 budget for 1.5 additional associate governmental program analyst positions to perform human resources, procurement, and budgeting duties. Unfortunately, due to the increased costs and a projected decrease in revenues resulting from the COVID-19 pandemic, Finance withdrew this proposal like those of most other agencies. However, in 2021, when both of the Commission's half time AGPA (HR and Procurement) positions were vacated, the Commission consolidated them into a single full-time associate budget analyst position, since the Commission had no staff level employees to perform budget drills. And, in 2021-2022, Department of Finance and the Legislature approved a budget change proposal for two additional associate governmental program analyst positions to perform human resources and procurement, and one information technology specialist to perform some of the IT duties of the Commission, raising the total PYs to 16 effective July 1, 2022.

Beginning July 1, 2022, the Commission has authority for 16 positions: one executive director (exempt), one chief legal counsel (CEA B), one assistant executive director (SSM II), one attorney IV, two attorney IIIs, one attorney I, one senior information systems analyst II, one senior information systems analyst I, one senior legal analyst, five associate governmental program analyst positions (1 each for Program, HR, Procurement, Accounting, and Budget) and one office technician.

Finally, to comply with Budget Letter (BL) 24-24 regarding Government Efficiencies Reduction, Commission staff had to relinquish funding for an Attorney III position. The position remains on the books, but a BCP will be required to reestablish the funding.

Administration

Exec Director	1.0	1.0
Atty IV	1.0	1.0
C.E.A. B (Attorney)	1.0	1.0
Atty III	2.0	2.0
Staff Svc Mgr II-Mgr I	1.0	1.0
Info Tech Spec II	1.0	1.0
Atty	0.9	1.0
Info Tech Spec I	0.4	1.0
Sr Legal Analyst	1.0	1.0
Assoc Budget Analyst	0.5	1.0
Assoc Govtl Prog Analyst	3.2	4.0
Ofc Techn-Typing	0.5	1.0
Temporary Help	-	0.5
TOTALS, AUTHORIZED POSITIONS	13.5	16.5

In addition to the small number of positions, there has been significant turnover. Out of a total of four staff attorney positions, two experienced turnover in 2024-2025 including the attorney IV position and one attorney III position for which the funding was removed entirely and not replaced; one in 2022-2023; one in 2021-2022; one in 2020-2021; three

in 2019-2020; and two in 2017-2018. These are the primary positions involved in preparing the legal analysis of proposed mandate decisions for hearing. The legal practice at the Commission is very specialized. There are only a handful of mandates law attorneys in the state and the work is very complex, detail oriented, and the analyses are lengthy. To be successful, an attorney must be comfortable with constantly learning new areas of law and developing a deep understanding of the programs, laws, and funding involved, which may involve several complex issues, all of which need to be flushed out and explained concisely in plain English. The research is very academic, painstakingly detail-oriented, and solitary, and the office tends to be very quiet, which does not suit every attorney. Finding attorneys who possess these skills and an academic temperament such that they can enjoy digging deeply as they must, can timely produce voluminous and complex analyses as is statutorily required, and can work quietly for extended periods of time with little interaction as is often necessary, is a constant challenge for the Commission. As a result, these positions have significant recruitment and retention challenges. In addition to the challenges of recruiting an attorney with the requisite skills and temperament, there has been a perceived lack of promotional opportunities at the Commission, and there is competition with the private sector and with local agencies and other state agencies that have greater promotional opportunities. Once an attorney promotes to attorney III, there has been little room for advancement at the Commission unless the attorney chose to pursue an executive position as chief legal counsel or executive director. In 2019-2020, the Commission reclassified one attorney III position as an attorney IV position, for recruitment and retention purposes and due to the complexity of the work and the fact that Commission attorneys litigate their own matters all the way up to the California Supreme Court in most cases. Thus far, this re-class appears to have helped to reduce the trend of experienced Commission attorneys separating from the Commission to promote elsewhere.

Table A. shows completed workload and position authority for the past five fiscal years. Table A. includes matters heard by the Commission as well as matters withdrawn or dismissed prior to a hearing since significant staff resources are also committed to matters that are withdrawn or dismissed as this usually occurs after the draft proposed decision, and often after the proposed decision, have been issued by Commission staff. This table does not reflect work completed for litigation, which has seen a recent uptick; regulations; or special projects.

**Table A. Commission Decision Making and Position Authority
2020-2021 to 2024-2025²³**

Matters Completed	2020- 2021	2021- 2022	2022- 2023	2023- 2024	2024- 2025
Test Claims	5 ²⁴	3 ²⁵	4 ²⁶	8	6
Parameters and Guidelines	2	2	1	4	7
Parameters and Guidelines Amendments	0	1	1	0	0
Incorrect Reduction Claims	11	4	3	0	1
Order to Set Aside a Test Claim, Parameters and Guidelines, or Incorrect Reduction Claim Decision	0	0	1	0	1
Requests for Test Claim Decision Reconsideration Based on Court Action	0	0	1	1	1
Statewide Cost Estimates	2	2	3	1	5
Requests to Review Claiming Instructions	0	0	0	0	0
Requests for Mandate Redetermination	0	0	0	0	0
Requests for Mandate Redetermination to be Amended, Set Aside, or Reinstated, as Directed by the Legislature or Court Action	0	0	0	0	0
Requests for Mandate Redetermination Reconsideration Based on Court Action	0	0	0	0	0
Appeal of Executive Director Decisions	0	0	0	0	1

²³ This table does not reflect work completed for litigation, regulations, and special projects, nor does it reflect staff turnover. Substantial resources were also expended on two litigation matters, one regular regulation package, recruitment, and workforce, succession, strategic, and facilities planning. Moreover, 25 percent of the Commission's attorneys in 2022-2023 were new to the Commission, as were approximately 63 percent of the administrative staff. New Commission attorneys need to first work on less complex mandates claims as part of their on-the-job training before beginning work on NPDES claims and new administrative staff require time for onboarding and training and higher levels of supervision than their more experienced counterparts.

²⁴ This includes one Test Claim that was dismissed.

²⁵ This includes one Test Claim that was dismissed.

²⁶ This includes one Test Claim that was dismissed.

Matters Completed	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025
Personnel Years	13	13	16	16	16

C. Pending Workload

The Commission's current caseload consists of: test claims, parameters and guidelines, SCEs, IRCs, PGAs, and MRs. Workload also consists of regulatory actions, litigation, and inquiries from the Legislature and state agencies, as well as administrative workload including budget, procurement, human resources, public records, and public meetings requirements.

Table B. Pending Workload as of June 30, 2025²⁷

Type of Action	Number Pending
Test Claims	38
Incorrect Reduction Claims	1
Proposed Parameters and Guidelines	1
Proposed Parameters and Guidelines Amendments	0
Mandate Redeterminations	0
Statewide Cost Estimates	6
Litigation Matters Pending	0
Regulatory Actions	1
Responding to inquiries and audits from the Legislature, LAO, BSA, and other state and local agencies	Ongoing ²⁸

Test Claims

As of July 1, 2025, there are 38 test claims pending and the Commission's test claim caseload is backlogged due to the NPDES permit test claims. Since 2013, for all non-NPDES permit test claims filed, Commission staff have analyzed them as soon as the comment and rebuttal periods are complete and the record is closed and are set for hearing as soon as possible thereafter. Table C. shows the pending test claim filings by fiscal year and claimant type.

²⁷ You can find the current status of the Commission's pending caseload here: <https://csm.ca.gov/pending-caseload.shtml>

²⁸ The Commission regularly responds to inquiries from the Legislature, LAO, and other state and local agencies regarding mandates. The Commission is also under audit at nearly all times including purchase authority accreditation audits, SPB audits, and cyber security audits.

Table C. Pending Test Claims by Fiscal Year of Filing and Claimant Type

Filing Date by Fiscal Year	School District (K-14)	Local Agency	Total
2010-2011	0	1	1
2011-2012	0	0	0
2012-2013	0	0	0
2013-2014	0	2	2
2014-2015	0	1	1
2015-2016	0	1	1
2016-2017	0	2	2
2017-2018	0	23	23
2018-2019	0	0	0
2019-2020	0	0	0
2020-2021	0	0	0
2021-2022	0	0	0
2022-2023	0	2	2
2023-2024	0	0	0
2024-2025	0	6	6
Totals	0	38	38

Parameters and Guidelines

As of July 1, 2025, the parties in one of the pending parameters and guidelines filed a Notice of Waiver of Procedural Requirements on February 20, 2024, to allow the claimant to file a proposed RRM and the State parties time to review and comment on the proposal. The claimants have filed their comments and over 80,000 pages of supporting materials requesting that an RRM be included in the Parameters and Guidelines. As noted above, parameters and guidelines are a high priority for the Commission since an SCE cannot be adopted until after claims have been filed following adoption of the decision and parameters and guidelines and issuance of the Controller's claiming instructions. Generally, the most common reasons for delay of these items include litigation on the test claim decision, disputes regarding the activities claimed to be reasonably necessary to comply with the mandate, pending agreements between the parties on an RRM, or pending requests by one of the parties to include an RRM in the parameters and guidelines. Table D shows the pending parameters and guidelines. Commission staff, following the backlog reduction plan, have been expediting all parameters and guidelines immediately upon an approved or partially approved test claim. Therefore, parameters and guidelines can be heard as soon as two Commission hearings after the test claim decision is adopted, thus preventing a backlog in parameters and guidelines.

**Table D. Pending Parameters and Guidelines by Fiscal Year of
Test Claim Filing and Claimant Type**

Year Test Claim Decision Adopted	School District (K-14)	Local Agency	Total
2022-2023	0	1 ²⁹	1
Totals	0	1	1

Statewide Cost Estimates

Existing law requires the Commission to adopt a SCE within 12 to 18 months of a test claim filing, if the Commission determines that a state mandate exists. Generally, the Commission's practice is to use actual reimbursement claims filed by the claimants to develop the SCE, because prior attempts to prepare SCEs using other data provided no useful information. Though not perfect, using actual reimbursement claims data does provide useful information that brings the estimate much closer to the actual costs than in past SCEs, which did not rely on actual claims. Moreover, staff is able to include assumptions in the SCEs, based upon issues that are addressed in the test claim or parameters and guidelines decisions, or that arise in the claiming process which can help provide a context for the numbers and may be useful in the decision-making process. The Controller develops claiming instructions within 90 days after the adoption of parameters and guidelines. Claimants have 120 days from the release of the claiming instructions to file claims for the initial period of reimbursement. However, if reimbursement is based on a uniform cost, it may be possible to prepare the SCE before reimbursement claims have been filed, since costs can be more accurately predicted using the formula. Commission staff typically set SCEs for the first hearing after the claims data is received from the Controller which is typically 7 to 9 months after the adoption of parameters and guidelines. Commission staff also prepares SCEs when a PGA has been adopted (which may be triggered by a request for a PGA or mandate redetermination) that may change the state's liability due to a clarification of the mandated program, a change in reimbursement method, or a subsequent change in law. Table E. shows the current SCE caseload pending before the Commission as of July 1, 2025.

²⁹ The original Test Claim Decision on *San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6)*, 07-TC-09 was adopted on March 26, 2010 and the Amended Decision on Remand for the Test Claim on this program, 07-TC-09-R, was adopted on May 26, 2023.

Table E. Pending Statewide Cost Estimates by Fiscal Year and Claimant Type

Fiscal Year Parameters and Guidelines Adopted	School District (K-14)	Local Agency	Total
2024-2025	1	5	6
Totals	1	5	6

Incorrect Reduction Claims (IRCs)

The IRC caseload is not backlogged. As of July 1, 2025, there is one IRC pending alleging \$465,094 in incorrect reductions to mandate reimbursement claims for the *Child Abduction and Recovery* program. Table F. shows the pending IRC caseload by fiscal year that the claim was filed and claimant type, as of July 1, 2025.

Table F. Pending Incorrect Reduction Claims by Fiscal Year of Filing and Claimant Type

Fiscal Year of Filing	School District (K-14)	Local Agency	Total
2024-2025	0	1	1
Totals	0	1	1

IRCs are filed with the Commission based on reductions of reimbursement claims taken by the Controller. Unlike test claims, where one claimant represents all potential claimants statewide, IRCs are filed on individual reimbursement claims filed by a single claimant.³⁰ Though the Commission may combine IRCs on the same program and similar issues for purposes of analysis, oftentimes IRCs do not lend themselves to consolidation because issues unique to each claim must be addressed.

The process for resolving IRCs can be complex and differs with each claim. For some claims, once the claimant files an IRC, an informal conference may be conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC is settled. When the issues cannot be resolved, Commission attorneys prepare a detailed analysis of the legal and factual issues, the Commission approves, partially approves, or denies the IRC, and adopts a decision. Whether or not the issues are resolved at an informal conference, staff must spend time to prepare and review the record (including the records for the test claim and parameters and guidelines decisions, and the claiming instructions), review detailed reimbursement claims, and determine the legal and audit issues. This process can be lengthy. There is currently one state-mandated program

³⁰ California has 58 counties so county claims are limited to 58 potential IRCs per program, per year. However, audits of mandate reimbursement claims of cities, school districts, and special districts create the potential for many more IRCs per program, per year (currently there are a total of 42 audits on 9 programs that are within the three-year period of limitation to file an IRC and could potentially result in an IRC filing).

with a pending IRC. Table G. shows the number of IRCs listed by program, claimant type, and total reduction amount per program.

Table G. Pending IRCs and Amount of Alleged Incorrect Reductions by Program

	Number of IRCs	Reduction Amount
School District Claims	0	0
Local Agency Claims	1	1
<i>Child Abduction and Recovery</i>	1	\$465,094
TOTAL	1	\$465,094

Parameters and Guidelines Amendments (PGAs)

As of July 1, 2025, there are no PGAs pending. As with mandate redeterminations, there is no statutory deadline for completing PGAs, but the Commission generally prioritizes PGAs over IRCs because, like test claims and mandate redeterminations, they affect all eligible claimants as well as the state.

III. Challenges to Reducing the Backlog

As of July 1, 2025, the Commission has 38 test claims pending.³¹ Additionally, the current caseload of the Commission includes one parameters and guidelines, six SCEs, and one IRC, which are included in the plan to provide a fuller understanding of the Commission's caseload and priorities. The Commission faces a wide range of challenges and factors that may delay completion of the caseload, as discussed below.

A. Multiple Statutory Requirements

The Commission is charged by law with multiple responsibilities in addition to hearing test claims and IRCs. Government Code section 17500 et seq. also requires the Commission to adopt parameters and guidelines, prepare SCEs, hear mandate redetermination requests, hear requests to amend parameters and guidelines, hear requests to review the Controller's claiming instructions, and review county applications for a finding of severe financial distress. Each matter must proceed in accordance with the due process procedures outlined in the Government Code and the Commission's regulations, and required by the Constitution, which allow for party, interested party, and public participation.

While the Commission has not received a county application for a finding of significant financial distress since 2005, state law is clear that when these applications are filed, the county is entitled to a final decision by the Commission within 90 days. If the Commission receives an application, nearly all of the Commission's staff resources will be shifted to conduct the required investigation, hearing, and determination.

Parties are authorized to request extensions of time to file comments and postponement of hearing on quasi-judicial matters pending before the Commission. Under specified conditions, when good cause is shown, the executive director is required by statute to

³¹ 38 of the pending claims are local agency claims, 32 of which are regarding National Pollutant Discharge Elimination System (NPDES) permits. There are no school district test claims currently pending.

grant the request. The Commission frequently receives requests for extensions that result in delays and for postponements that result in items on the agenda being postponed.

The Commission also periodically amends its regulations. In 2023-2024, Commission staff completed one clean-up package. In 2024-2025, Commission staff began the process for another clean-up package by holding an informal workshop and inviting all parties, interested parties, and interested persons to participate. These regulatory packages require significant staff time to research, prepare, and usher through the regulatory process.

B. Litigation

The Commission was involved in the following two significant litigation matters in 2024-2025, all at the trial court level.

- ***County of Los Angeles v. Commission on State Mandates and Department of Finance***
Los Angeles County Superior Court, Case No. 23STCP04362
Accomplice Liability for Felony Murder (19-TC-02)
- ***City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance, Sacramento County Superior Court, Case No. 24WM000056***
(Remand of Lead Sampling in Schools: Public Water System No. 3710020 17-TC-03R).

The first matter resolved after the trial court granted the demurrers filed by the Commission and the Department of Finance for the failure to timely name an indispensable party (the Department of Finance). The demurrers filed in the first case required extensive research, briefing, and two hearings before the trial court resolution. The second case resolved after an appeal and an order on remand granting the petition for writ of mandate and finding that the City was compelled as a practical matter to comply with the test claim permit.

There are currently no cases pending in the courts.

C. Number and Complexity of Filings

As previously noted, the most labor-intensive activity for Commission staff is preparing proposed decisions for test claims, parameters and guidelines, MRs, and IRCs.

1. Test Claims

The 32 pending NPDES permit claims make up the most significant portion of the current caseload. The factual determinations for the pending claims will require the analysis of substantial evidence in the record in accordance with Government Code section 17559. Commission staff expects that analysis of the currently pending 32 NPDES claims will be completed by the December 2027 Commission meeting. However, some of these matters may be consolidated for hearing in the future, if appropriate, which might speed the process.

Finally, test claims are often thought to be filed on one individual statute or code

section. This is not correct. Test claims can be filed on numerous statutes (each containing numerous code sections), regulatory sections, and executive order provisions. For example, the 51 test claims filed in 2002 alleged that nearly 500 statutes, and 400 regulatory sections and executive orders were mandated programs. By law, each statute, code section, regulation, and provision of the executive orders pled requires a finding by the Commission. Moreover, even when a test claim is only on one statute, that statute may raise complex issues of law or an issue of first impression and so may require substantial staff time despite its apparently small size. As a result, the time it may take to hear and decide any particular test claim is highly variable and is difficult to predict with widget-like accuracy.

2. Reasonable Reimbursement Methodologies and Parameters and Guidelines

A request to include a reasonable reimbursement methodology (RRM) in parameters and guidelines is a request made by a local government claimant, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5. Under article XIII B, section 6 of the California Constitution and 17550 et seq. of the Government Code, the Commission is required to make the factual determination, based on substantial evidence in the record, of whether the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. The proposed RRM must be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the parameters and guidelines, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred.

The adoption of an RRM pursuant to Government Code sections 17557 or 17518.1 streamlines the claiming process and reduces or eliminates auditing issues on reimbursement claims filed with the Controller and was originally proposed by the LAO for that reason. However, the process increases the responsibility of the Commission when adopting parameters and guidelines, by requiring the additional factual finding that the proposal reasonably represents the mandated costs incurred by all eligible claimants in the state pursuant to article XIII B, section 6 of the California Constitution. Analyzing such proposals requires significant staff time, in some instances more than the time required for a test claim analysis. There is currently one requested RRM in parameters and guidelines that is set for hearing on December 5, 2025, and no PGAs pending before the Commission.

3. Incorrect Reduction Claims

Unlike test claims, where one claimant represents all potential claimants statewide in a manner analogous to a class action lawsuit, individual claimants file IRCs with the

Commission and seek redress for reductions that apply only to that one claimant.³² The process for resolving IRCs can be complex and differs with each claim. Most IRCs involve issues of law and fact. Thus, analysis of each IRC requires legal and fiscal consideration, as well as a technical review of the Controller's audit. For some claims, once the claimant files an IRC, an informal conference is conducted where Commission staff mediates the issues in dispute between the claimant and the Controller. If the issues are resolved in the informal conference, the IRC may be settled.

When the issues cannot be resolved, Commission attorneys prepare a detailed analysis of the legal and audit issues in the proposed decision. The Commission approves, partially approves, or denies the IRC, and adopts a decision. Whether or not the issues are resolved at the informal conference, Commission staff must spend time to prepare and review the record (including the original test claim record, parameters and guidelines, and claiming instructions), review detailed reimbursement claims, and determine the legal and fiscal issues. This process can be lengthy.

Under the Commission's regulations, a claimant has three years from the notice of a reduction to file an IRC. As stated above, there is one IRC pending as of July 1, 2025, which is tentatively set for hearing on December 5, 2025. However, since the beginning of the 2022-2023 fiscal year, the Controller has issued approximately 42 audit reports on 9 mandated programs.³³ The FY 22-23 – FY 24-25 audits were on the following programs for local agencies: *Crime Statistics Reports for the Department of Justice* (4); *Custody of Minors-Child Abduction and Recovery* (12); *Domestic Violence Arrest Policies and Standards* (4); *Identity Theft* (8); *Municipal Storm Water and Urban Runoff Discharges* (1); *Racial Profiling: Law Enforcement Training* (7); and *Sexually Violent Predators* (3). For K-12 school districts, the FY 22-23 – FY 24-25 audits were completed on: *California Assessment of Student Performance and Progress* (2); and *Graduation Requirements* (1). For community college districts, no audits were completed during FY 22-23 – FY 24-25. It is possible that, in response to recent Controller audits, and the fact that 42 of them are currently within the period of limitation for filing an IRC, that numerous IRCs may be filed in the near future.

D. Administrative Workload

In addition to the processing and legal analysis of mandate related matters, Commission staff are responsible for all of the general administrative duties of a state agency, including budgeting, procurement, human resources, information technology, and public records related duties and the specific duty of the executive director to "keep a full and true record of all proceedings of the Commission. . . ." pursuant to Government Code 17530. In recent years this has included audits in the areas of procurement, human resources, and information technology, which are now on-going continuous auditing processes, and which require that immense staff resources be

³² California has 58 counties, so county claims are limited to 58 potential IRCs per program, per year. Mandates involving cities or school districts, however, create the potential for over 1,600 IRCs per program, per year.

³³ The period of limitations to file an IRC is three years (2 CCR 1185.1).

diverted from mandate determination and hearing-related duties, at both the staff and the management and supervisory levels.

Return to Office and the Possible Sunsetting of Bagley-Keene Provisions Allowing Fully Remote Meetings

As can be seen from the 2024-2025 level of productivity, telework was conducive to increased productivity as Commission staff adopted new ways of communicating and collaborating remotely, reducing interruptions for attorneys in the midst of detailed legal work because much of the remote collaboration and communication occurs at the employee's chosen time (i.e. between projects or blocks of work, instead of being interrupted with numerous meetings, people popping into their offices unannounced, or the sounds of colleagues collaborating outside of their offices). Additionally, the Commission saw turnover in multiple positions since the minimum two-day per week return to office requirement was announced on April 10, 2024. Since the announcement, 25 percent of Commission staff left citing the return to office mandate. The Commission's strong support of and success in telework was a major factor helping to recruit and retain staff into positions that otherwise might be less appealing due to the relative difficulty of the work and limited options for upward mobility.

The participants in the mandates process (representatives and witnesses for local governments and state agencies) prefer to participate remotely because it saves time and costs for them. It also made the Commission's process more accessible and attracted a significantly larger audience of people who generally do not have the time or money to travel to Sacramento for a 1-to-2-hour Commission meeting from across the state. The Bagley-Keene provisions allowing fully remote hearings ended and now the Commission is holding more staff time intensive and costly hybrid meetings to continue to allow remote participation for witnesses and agency representatives.

E. Number and Level of Positions

As discussed above, the Commission's position authority was reduced by nearly half between 2002 and 2009 and the reductions were compounded by the furlough and personal leave programs that followed. The decrease in staff is one of the primary factors that caused or exacerbated the historic backlog. The number of matters completed is based on the number of positions and staff hours and on the classification and level of those positions. Any reduction in staff would likely result in a permanent reduction in productivity. Additionally, staff turnover results in a temporary reduction in productivity.

F. Delays Caused by Litigation and Requests for Extensions of Time or Postponements

Commission decisions are sometimes delayed because of request for extensions of time and postponements or because they are litigated. When that occurs, Commission proceedings on parameters and guidelines and SCEs are delayed, sometimes for several years. A recent example is San Diego Regional Water Quality Control Board Order No. R9-2007-0001, 07-TC-09 and 07-TC-09R, which was filed in 2008. After five extensions, the Commission rendered its decision in 2010. The parties litigated the Commission's decision, and the courts issued their decisions in 2017 and 2022. After

remand, the Commission adopted an amended decision in 2023. The parameters and guidelines are currently set for hearing on December 5, 2025.³⁴ Although these types of delays used to be outliers, more litigation is likely with other storm water permits. And even non-storm water claims may be significantly delayed because of extensions, postponements, and litigation.

Hearing postponements, by definition, delay the completion of pending matters. Currently, there is no limit to the number of extensions and postponements that may be requested by the parties. For some claims, more than 10 requests for 60-day extensions and postponements have been requested and granted. For every six requests granted, a year or more is added to the time to complete the claim. Under specified conditions, when good cause is shown, the executive director is required by statute and regulation to grant the request. The handling of these requests and revision and reissuance of the agenda also takes staff time away from the processing of other pending matters.

Additionally, handling litigation and administrative tasks draws staff time away from matters pending before the Commission.

G. Other Pending Work Contributes to the Test Claim Backlog

Litigation, parameters and guidelines and PGAs that include complex RRM requests pursuant to 17557, mandate redeterminations, IRCs, and, requests to reconsider prior decisions, have all contributed to the delay in eliminating the test claim backlog in the past.

H. Unique Issues Related to IRCs Which May Contribute to the Backlog

The filing of an IRC is an appeal of the Controller's reduction of a reimbursement claim. The number and complexity of the filings, number, classification, and level of positions, and other pending matters, all factor into the time that it takes to complete IRCs. Additionally, unlike for test claims, parameters and guidelines, and SCEs, there is no statutory deadline for completing IRCs. Therefore, IRCs have lower priority when setting matters for hearing, though the Commission makes every effort to hear all matters filed within a reasonable time. Finally, though it may appear at times that work on IRCs is delaying work on test claims, these relatively simpler matters must be assigned to newer staff so that they can learn mandates, and to more experienced staff who have been working on voluminous and complex test claims to prevent burnout. Moreover, having some of these claims set for hearing helps to ensure that there are matters on the agenda for the Commission to hear and decide when the pending test claims get bogged down with complex legal and factual issues and requests for extensions and postponements from the parties.

³⁴ A more extreme example of this was in *Behavioral Intervention Plans* (BIPs), CSM 4464, where there were 27 extension requests granted while the parameters and guidelines were pending, followed by seven years of litigation resulting in a nearly 13-year delay in the adoption of parameters and guidelines.

I. Number of Commission Meetings

The Commission is required by statute to conduct at least six public meetings per year, and tentatively schedules two additional meetings each year. Preparation for each Commission meeting consumes a significant amount of staff time, regardless of the number of items set for hearing. Though it may seem counterintuitive, the more meetings the Commission holds, the fewer items it can complete for hearing on an annual basis. This is attributable to timing of the release of drafts for public comment, the requirement to provide service and public notice on all matters, and the time required of the Commission's very small staff to prepare hearing materials for Commission members and the public and to coordinate the participation of the parties, which is time diverted from preparing matters for hearing. It is to prevent this disruption of the work of preparing matters for hearing, that the use of the tentative hearing dates is avoided when possible.

IV. Backlog Reduction Strategy

The Commission has had a long-standing practice of prioritizing test claims, parameters and guidelines, and SCEs because of the statutory deadline attached to those matters and otherwise generally hears matters in the order filed with the Commission. This first-in-time approach is a core policy that has served the Commission well. Over the years, however, the Commission has made exceptions to this policy in certain circumstances. For example, when a court has ruled on a matter before the Commission, the Commission has consistently responded by moving that matter ahead in the queue, whether or not the courts have ordered the Commission to do so.

Commission staff has taken matters out of order for staff development purposes and has also, on occasion, assigned less-complicated matters out of order to a staff person who has just completed a particularly difficult assignment or who is new to the Commission. One staff attorney and the executive director were new in 2024-2025, one staff attorney was new in 2022-2023, one in 2021-2022 and three in 2020-2021. This increases the opportunities for staff to gain experience in a wide variety of legal matters and prevents staff burnout.

The Commission remains committed to continuing to eliminate the backlog by adhering to the first-in-time policy unless circumstances justify an exception. The following are strategies the Commission is employing to more efficiently decide matters, with a goal of eliminating the backlog as soon as possible: (1) claim consolidation; (2) common issues; (3) simple test claims and single-issue IRCs; (4) stakeholder requests; and (5) joint RRM.

A. Claim Consolidation

Pursuant to California Code of Regulations, title 2, section 1183.5, the executive director may, subject to appeal, "consolidate part or all of any test claim with another test claim or sever a test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim." Similarly, Government Code section 17558.8 and section 1185.3 of the Commission's regulations allow the executive director to consolidate IRCs. To date, the Commission has consolidated numerous test claims. However, consolidation has been used sparingly for IRCs because it only works if the

issues of law and fact are the same, the claimants filed their reimbursement claims in the same manner and for the same costs, and the Controller's auditors were consistent in making claim reductions based on similar findings of fact or law.

In addition, if the Commission decides an issue in one matter that is contested in other matters, the time required to complete those other matters may be reduced. The shorthand for this concept is "cross-cutting issues." For example, in 2010, the Commission adopted decisions on the County of Los Angeles and the City of Tustin *Investment Reports* IRCs. In doing so, the Commission resolved certain cross-cutting issues common to nearly all of the 72 then pending IRCs for that program. Then, Commission staff worked to ensure that the remaining *Investment Reports* IRCs were resolved informally through negotiations between claimants and the Controller's staff. Likewise, in 2020-2021 there was a request for consolidation for several IRCs filed on the *Municipal Storm Water and Urban Runoff Discharges* program, which happened to be filed on the same issue and which resulted in the consolidation of seven claims for hearing.

B. Requests to Expedite

Commission staff occasionally receives requests from a party to expedite certain matters. Naturally, all parties would like their claims decided as quickly as possible. Though generally such requests are disfavored in the interest of fairness to other parties who have been waiting for a longer time to have their matters heard, on occasion certain matters may be expedited, particularly where consolidation with an earlier filed claim is appropriate or where the request has broad support or because of the importance of the speedy resolution of a particular matter to both state and local agencies.

C. Joint Reasonable Reimbursement Methodologies (Joint RRM)s

A joint RRM and statewide estimate of cost (SEC, not to be confused with an SCE) is based on a settlement agreement between Finance and local governments pursuant to Government Code section 17557.1 and 17557.2. The RRM and SEC remain in effect for five years, unless another term is provided in the agreement or the agreement is jointly terminated by the parties. The Commission can approve a joint RRM and proposed SEC simply with a showing that an agreement between Finance and a local entity has been reached, and that the joint methodology is broadly supported by a wide range of local agencies or school districts. If more joint RRM)s and SECs are negotiated by the parties, as was recommended in the 2009 BSA Report and by others, the agreements may result in less work required of Commission staff and would likely reduce auditing issues on reimbursement claims for the Controller, since the claim would not need to be supported with documentation of actual costs incurred. To date, the Commission has adopted only one joint RRM and SEC, which took approximately three years for the parties to negotiate. The joint RRM and SEC was in effect for three fiscal years before the program was suspended by the Legislature. That joint RRM was extended through 2015 after which the parties let it lapse and Commission staff adopted parameters and guidelines for the program which require that, if the program is ever taken off suspension, claimants submit claims based on their actual costs incurred.

Currently, there is one pending request for inclusion of an RRM in parameters and guidelines but there are no pending joint RRM's.

V. Plan of Action

Despite the uncertainty caused by the many factors discussed in this report, only some of which are within the Commission's control, Commission staff believes that the following updated plan to reduce the backlog can be achieved.

Commission staff is currently focused on the completion of the test claim backlog. Key to this pursuit is the retention of the Commission's experienced mandate attorneys since turn-over in these positions results in major setbacks in completing these claims. To help prevent burnout caused by constant work on the voluminous and complex NPDES claims, the Commission will continue to rotate the legal staff between these and the relatively easier other test claims and pending matters.

To the extent authorized, the Commission will allow staff to continue to telework to the fullest extent possible without diminished individual or organizational performance in order to improve employee retention and recruitment, improve or maintain employee productivity, reduce state environmental impacts, such as traffic congestion and air pollution, and maintain or improve customer service.

VI. Conclusion

Over the years, a significant backlog of test claims and IRCs accumulated in the Commission's pending caseload. The IRC backlog was completed in 2022-2023 and the Commission is now focused on completing the NPDES test claim backlog and ensuring the speedy resolution of newly filed test claims. This plan represents Commission staff's approach to reducing and ultimately eliminating the test claim backlog as quickly as possible. It is important to note, however, that this ambitious plan is only an *estimate* of what can be completed in the coming years based on what staff knows as of July 1, 2025. Many factors beyond the control of Commission staff could increase the time it takes to eliminate the backlog.

Exhibit A. Test Claim to Statewide Cost Estimate Tracking from July 1, 2013 to July 1, 2025

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
1.	<i>California Assessment of Student Performance and Progress (CAASPP)</i>	14-TC-01	Filed 12/23/14 Consolidated 8/14/15 ³⁵	40	63	0	0	1/22/16	3/25/16	1/27/17
2.	<i>Training for School Employee Mandated Reporters</i>	14-TC-02	6/1/15	0	0	0	0	12/3/15	1/22/16	10/28/16
3.	<i>California Assessment of Student Performance and Progress (CAASPP) II</i>	14-TC-04	Filed 6/26/15 Consolidated 8/14/15	0	0	0	119	1/22/16	3/25/16	1/27/17
4.	<i>Local Agency Employee Organizations: Impasse Procedures</i>	15-TC-01	6/02/16	0	0	23	0	1/27/17	Test Claim Denied	Test Claim Denied

³⁵ 14-TC-01 and 14-TC-04 were consolidated for hearing on August 14, 2015 which restarts the statutory clock for adopting an SCE. (2 CCR 1183.18(a)(7).)

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
5.	<i>Certificated School Employees: Parental Leave</i>	16-TC-01	12/21/16	0	0	0	0	9/22/17	Test Claim Denied	Test Claim Denied
6.	<i>Cal Grant: Grade Point Average and Graduation Certification</i>	16-TC-02	6/26/17	30	0	0	0	1/26/18	5/25/18	3/22/19
7.	<i>Local Agency Employee Organizations: Impasse Procedures II</i>	16-TC-04	5/12/17	0	0	0	0	5/25/18	9/28/18	7/26/19
8.	<i>U Visa 918 Form, Victims of Crime: Nonimmigrant Status</i>	17-TC-01	3/06/18	0	0	14	0	9/28/18	1/25/19	11/22/19
9.	<i>Central Basin Municipal Water District Governance Reform</i>	17-TC-02	9/20/17	0	0	0	56	3/22/19	Test Claim Denied	Test Claim Denied
10.	<i>Lead Sampling in Schools: Public Water System No. 3710020</i>	17-TC-03	1/11/18	91	56	56	0	3/22/19	Test Claim Denied	Test Claim Denied

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
11.	<i>Peace Officer Training: Mental Health/Crisis Intervention</i>	17-TC-06	5/10/18	0	0	0	0	5/24/19	9/27/19	7/24/20
12.	<i>Youth Offender Parole Hearings</i>	17-TC-29	6/29/18	33	0	30	126	9/27/19	Test Claim Denied	Test Claim Denied
13.	<i>Public School Restrooms: Feminine Hygiene Products</i>	18-TC-01	12/07/18	0	0	0	56	5/24/19	11/22/19	12/4/20
14.	<i>Racial and Identity Profiling</i>	18-TC-02	6/14/19	0	0	0	0	5/22/20	9/25/20	7/22/22
15.	<i>Vote by Mail Ballots: Prepaid Postage</i>	19-TC-01	10/15/19	0	0	0	0	7/24/20	12/4/20	1/28/22
16.	<i>Accomplice Liability for Felony Murder</i>	19-TC-02	12/31/19	60	0	28	70	12/4/20	Test Claim Denied	Test Claim Denied
17.	<i>SANDAG: Independent Performance Auditor</i>	19-TC-03	3/19/20	31	0	0	0	9/25/20	Test Claim Denied	Test Claim Denied

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
18.	<i>County of Los Angeles Citizens Redistricting Commission</i>	19-TC-04	6/26/20	0	0	30	70	5/28/21	12/3/21	1/27/23
19.	<i>Sexual Assault Evidence Kits: Testing</i>	20-TC-01	12/31/20	0	0	0	0	7/23/21	9/24/21	9/23/22
20.	<i>Extended Conditional Voter Registration</i>	20-TC-02	12/23/20	0	0	0	0	12/3/21	Test Claim Denied	Test Claim Denied
21.	<i>California Voting for All Act: Ballot Translations and Posting Requirements</i>	20-TC-03	5/21/21	31	0	0	0	9/23/22	Test Claim Denied	Test Claim Denied
22.	<i>Juveniles: Custodial Interrogation</i>	21-TC-01	12/22/21	0	0	0	0	1/27/23	3/24/23	3/22/24
23.	<i>Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and</i>	21-TC-02	1/14/22	0	0	0	0	7/22/22	Test Claim Dismissed	Test Claim Dismissed

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
	<i>Modesto Irrigation District – Don Pedro Hydroelectric Project and La Grange Hydroelectric Project</i>									
24.	<i>Sex Offenders Registration: Petitions for Termination</i>	21-TC-03	6/29/22	30	0	31	63	10/27/23	Test Claim Denied	Test Claim Denied
25.	<i>Resentencing to Remove Sentencing Enhancements</i>	22-TC-02	12/28/22	0	0	0	0	9/22/23	Test Claim Denied	Test Claim Denied
26.	<i>Criminal Procedure: Resentencing</i>	22-TC-03	12/16/22	0	0	0	0	1/26/24	Test Claim Denied	Test Claim Denied
27.	<i>Public School Restrooms: Menstrual Products</i>	22-TC-04	5/12/23	0	0	0	0	3/22/24	7/26/24	Tentatively Scheduled for 7/25/25
28.	<i>Free Application for Federal Student Aid (FAFSA)</i>	22-TC-05	6/23/23	60	0	0	0	5/24/24	7/26/24	5/23/25

#	Program Name	Matter Number	Date Filed	Days delayed due to State Ext.	Days delayed due to State Postpone	Days delayed due to Claimant Ext.	Days delayed due to Claimant Postpone	Date TC Decision Adopted	Date Ps&Gs Adopted, Set, or Tentatively Set for Hearing	Date SCE Set, or Tentatively Set for Hearing
30.	<i>Disclosure Requirements and Deferral of Property Taxation</i>	22-TC-06	5/2/23	30	0	0	0	7/26/24	9/27/24	Tentatively Scheduled for 7/25/25
31.	<i>Heating, Ventilation, and Air Conditioning (HVAC) Program</i>	23-TC-01	11/17/23	0	0	0	0	11/22/24	Test Claim Denied	Test Claim Denied
32.	<i>Transitional Kindergarten</i>	23-TC-02	1/22/24	60	0	0	0	5/23/25	Test Claim Denied	Test Claim Denied