

03/26/2024

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Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

10 Attorneys for Petitioner,  
11 CITY OF SAN DIEGO

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SACRAMENTO**

14 CITY OF SAN DIEGO,	)	Case No. <b>24WWM000056</b>
15	)	
16       Petitioner,	)	<b>PETITION FOR WRIT OF</b>
17 v.	)	<b>ADMINISTRATIVE MANDAMUS</b>
18	)	
19 COMMISSION ON STATE MANDATES,	)	<b>[Gov. Code, § 17559(b); Code Civ. Proc.,</b>
20	)	<b>§ 1094.5]</b>
21       Respondent.	)	
22	)	
23 STATE OF CALIFORNIA DEPARTMENT	)	
24 OF FINANCE AND STATE WATER	)	
25 RESOURCES CONTROL BOARD,	)	
26	)	
27       Real Parties in Interest.	)	
28	)	

21       Petitioner City of San Diego hereby petitions this Court for a writ of administrative  
22 mandamus pursuant to Government Code section 17559, subsection (b) and Code of Civil  
23 Procedure section 1094.5. Petitioner seeks a writ setting aside respondent Commission on State  
24 Mandates' (Commission) Decision regarding Test Claim No. 17-TC-03-R (Test Claim) adopted  
25 on December 1, 2023, and ordering the Commission to issue a new decision in accordance with  
26 this Court's opinion.

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1 Petitioner alleges as follows:

2 **PARTIES**

3 1. Petitioner City of San Diego (City) is a "local government" within the meaning of  
4 article XIII B, section 6 of the California Constitution. Petitioner is aggrieved by the decision of  
5 respondent Commission to deny the Test Claim, as alleged herein. Petitioner is authorized to  
6 commence this proceeding to set aside the decision of respondent Commission because the  
7 decision is not supported by substantial evidence and contrary to law.

8 2. Respondent Commission is a quasi-judicial body which hears test claims alleging the  
9 state legislature or a state agency imposed a reimbursable state mandate program upon a local  
10 government under article XIII B, section 6, of the California Constitution. The Commission's  
11 authority and duties are set forth in Government Code section 17500, et seq.

12 3. Real parties in interest are the California Department of Finance (DOF) and State Water  
13 Resources Control Board (SWRCB).

14 4. The DOF has authority over all financial and business policies of the State of  
15 California. The DOF's duties include establishing policies to carry out state programs, preparing  
16 and administer annual state budget, analyzing the fiscal impact of legislation, developing  
17 economic forecasts and revenue estimates, and monitoring expenditures of state departments.

18 5. SWRCB is part of the California Environmental Protection Agency, and, in  
19 coordination with nine Regional Water Quality Control Boards, regulates water quality in the  
20 State of California. One of SWRCB's numerous duties includes issuing permits for public water  
21 systems.<sup>1</sup>

22 6. Venue is proper in this Court because the cause of action arose in Sacramento County –  
23 where the Commission held the hearing and issued its decision.

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27 \_\_\_\_\_  
28 <sup>1</sup> A public water system is a system that provides water for human consumption to 15 or more  
connections or regularly serves 25 or more people daily for at least 60 days out of the year.  
(Health and Safety Code §116275(h).)

1 **STATEMENT OF FACTS**

2 7. In September 2015, the Legislature passed Senate Bill 334, which proposed amending  
3 the California Education Code to impose several requirements on school districts aimed at  
4 reducing the amount of lead in school drinking water. Senate Bill 334 (2015-2016 Sess.),  
5 introduced by Sen. Leyva on September 10, 2015. S.B. 334 stated it would impose a state-  
6 mandated local program on school districts. Exhibit 1, pp. 5-6.

7 8. The Governor vetoed S.B. 334 stating the following: “I agree that all California  
8 students should have access to safe drinking water but this bill creates a state mandate of  
9 uncertain but possibly very large magnitude.” Exhibit 2, Governor’s Veto Message on S.B. 334.

10 9. The Governor then “direct[ed] [SWRCB] to work with school districts and local public  
11 water systems to incorporate water quality testing in schools as part of their lead and copper  
12 rule.” Exhibit 2.

13 10. SWRCB then issued an amendment to the City’s water supply permit requiring the City  
14 to perform free lead testing at the request of any K-12 school in its service area –Permit  
15 Amendment No. 2017PASCHOOLS (Permit Amendment). Exhibit 3, City of San Diego Test  
16 Claim, pp. 102-114.

17 11. In compliance with the Permit Amendment, the City conducted hundreds of free tests,  
18 which amounted to approximately half a million in unrecoverable expenses. Declaration of Rex  
19 Ragucos, ¶¶ 31-33 attached to Exhibit 3.

20 **PETITIONER CITY OF SAN DIEGO’S TEST CLAIM**

21 12. On January 11, 2018, the City filed Test Claim No. 17-TC-03 arguing the amended  
22 permit constituted a new program or higher level of service and an unfunded state mandate.  
23 Exhibit 3.

24 13. Under article XIII B, section 6 of the California Constitution, when the Legislature or  
25 state agency mandates a new program or higher level of service on a local government, the state  
26 must reimburse the local government for the costs of said program or increased level of service.

27 14. State mandated programs eligible for reimbursement are “[1] programs that carry out  
28 the governmental function of providing services to the public, or [2] laws which, to implement a

1 state policy, impose unique requirements on local governments and do not apply generally to all  
2 residents and entities in the state.” *County of Los Angeles v. State of California*, 43 Cal. 3d 46, 56  
3 (1987).

4 15. In the Test Claim, petitioner argued the amended permit constituted a new program or  
5 higher level of service and an unfunded state mandate because (1) the new activities were not  
6 required under federal or state law, and (2) the City could not recoup the costs of the new  
7 requirements through new customer fees due to Proposition 218 and Proposition 26. Exhibit 3,  
8 pp. 45-46.

9 16. SWRCB filed comments on the Test Claim on August 13, 2018. SWRCB requested  
10 that the Commission deny the Test Claim because the new permit requirements did not constitute  
11 a new program or hire level of service. SWRCB argued providing drinking water is not a  
12 government function because both government and private entities provide drinking water.  
13 SWRCB also argued the new requirements were not uniquely imposed on local government  
14 because non-public water systems received similar permits. Exhibit 4, SWRCB Test Claim  
15 Comments.

16 17. The Department of Finance (DOF) also filed comments on the Test Claim on August  
17 13, 2018. DOF requested that the Commission reject the Test Claim because “[w]hile water  
18 service is a local governmental function in some jurisdictions, it is not a function unique to local  
19 governments.” Exhibit 5, DOF Test Claim Comments.

20 18. On November 9, 2018, Petitioner the City filed a response to the DOF and SWRCB  
21 comments. Petitioner argued providing public water service constituted a government function  
22 under both California and U.S. Supreme Court precedent. Additionally, petitioner argued the  
23 new requirements were uniquely imposed on local government because local governments face  
24 legal restrictions on raising revenue that do not apply to private suppliers. Exhibit 6, City of San  
25 Diego Response to Comments from DOF and SWRCB, pp. 4-9.

#### 26 **THE COMMISSION’S 2019 DECISION**

27 19. On March 22, 2019, after a hearing on the merits, the Commission issued its decision  
28 on the City’s Test Claim. The Commission held Permit Amendment No. 2017PA-SCHOOLS did

1 not constitute a state mandate under article XIII B, section 6 because it did not impose a new  
2 program or higher level of service. Exhibit 7, Commission Decision adopted March 22, 2019, pp.  
3 2-3.

4 20. The Commission found the new requirements were not uniquely imposed on local  
5 government because it issued identical permits to the private owners of public water systems.  
6 Exhibit 7, p. 40. The Commission also found that water service is not a government function.  
7 Exhibit 7, pp. at 42-56.

8 **APPEAL PROCEEDINGS (2019-2022)**

9 21. On June 20, 2019, the City filed a writ of administrative mandamus, pursuant to  
10 California Government Code section 17559(b) and California Code of Civil Procedure section  
11 1094.5, to overturn the Commission's decision.

12 22. The City argued (1) the Commission failed to proceed in a manner required by law by  
13 ruling providing water service is not a government function; (2) the Commission's finding that  
14 the new requirements were not uniquely imposed on local government was not supported by  
15 substantial evidence; (3) the Commission failed to proceed in a manner required by law by ruling  
16 the Permit Amendment did not require the City to carry out the government function of ensuring  
17 safe schools; and (4) the Permit Amendment deprived the City of its fee authority to charge for  
18 lead testing. Exhibit 8, City of San Diego Writ of Administrative Mandamus filed June 20, 2019.

19 23. On July 30, 2020, the trial court denied the City's writ in full.

20 24. The City appealed to the Third District Court of Appeal.

21 25. On April 29, 2022, the Court of Appeal issued its decision in favor of the City finding  
22 the Permit Amendment established a "new program" because water service is a government  
23 function. The Court reversed the trial court's decision and directed it to remand the matter to the  
24 Commission for further proceedings consistent with the Court's opinion. Exhibit 9, *City of San*  
25 *Diego v. Comm'n on State Mandates*, No. C092800, 2022 WL 1301817 (Cal. Ct. App. Apr. 29,  
26 2022).

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1 **TEST CLAIM PROCEEDINGS ON REMAND**

2 26. On remand, on March 23, 2023, issued a Draft Proposed Decision finding the Permit  
3 Amendment “impose[d] a reimbursable state-mandated program within the meaning of article  
4 XIII B, section 6 and therefore recommend[ing] that the Commission approve this Test Claim.”  
5 Exhibit 10, Commission Draft Proposed Decision, p. 2. Consistent with the Court of Appeal  
6 decision, the Commission found the Permit Amendment established a new program. Exhibit 10,  
7 pp. 42-44.

8 27. The Commission also found the City was practically compelled to comply with the  
9 Permit Amendment because:

10 the City submitted substantial evidence showing that it would suffer certain and severe  
11 penalties or other draconian measures if it decided to no longer provide water service to  
12 its residents or operate as a public water system in order to avoid compliance with the test  
13 claim order: namely, more than 1.3 million residents will lose access to safe and clean  
14 drinking water and the claimant will be in default and face immediate repayment on more  
15 than \$890 million in debt secured to maintain its water system.

16 Exhibit 10, pp. 9-10; See also Exhibit 10, pp. 50-51.

17 28. On May 4, 2023, SWRCB filed comments arguing that the City was not practically  
18 compelled to provide water service because it could sell its water system to avoid the  
19 consequences of not complying with the Permit Amendment. Exhibit 11, SWRCB Comments on  
20 Draft Proposed Decision, pp. 3-4.

21 29. On May 4, 2023, the City filed comments stating it agreed with the Commission’s Draft  
22 Proposed Decision finding practical compulsion because (1) failure to comply with the Permit  
23 Amendment could result in the City’s water permit being suspended and 1.3 City residents losing  
24 access to water, and (2) discontinuing water service would constitute a default of its financing  
25 agreements, causing approximately \$890 million in debt to become due. The City also presented  
26 additional supporting case authority on practical compulsion – *Dep’t of Fin. v. Comm’n on State*  
27 *Mandates*, 85 Cal. App. 5th 535, 558 (2022). Exhibit 12, City of San Diego Comments on Draft  
28 Proposed Decision issued on March 23, 2023; See also Exhibit 13, City of San Diego Comments  
Draft Proposed Decision issued on December 21, 2018, pp. 10-11.

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1       30. On September 6, 2023, the Commission issued a Proposed Decision, reversing its Draft  
2 Proposed Decision and finding the City was not practically compelled to comply with the Permit  
3 Amendment. Accordingly, the Commission found the Permit Amendment did not impose a  
4 reimbursable state mandate. Exhibit 14, Commission Proposed Decision.

5       31. The Commission found the City was not practically compelled to comply with the  
6 Permit Amendment because (1) the evidence did not show that if the City defaulted on its \$890  
7 million in bonds and loans, payment would become “immediately” due; (2) the City’s General  
8 Fund is not at risk because the bond and debt belonged to the City’s water system, not the City;  
9 (3) the City can sell its water system; and (4) the evidence did not show that SWRCB would  
10 suspend the City’s water permit if it failed to comply with the Permit Amendment. Exhibit 14,  
11 pp. 52-65.

12       32. On November 30, 2023, the City filed comments on the Commission’s Proposed  
13 Decision. The City explained (1) discontinuing water service would constitute a breach of its  
14 \$1.29 billion-debt, which it did not have sufficient funds to pay and would require liquidation;  
15 (2) the City and its Water Utility are interconnected such that a default by the Water Utility  
16 would affect the credit-worthiness of the City; and (3) selling the City’s water system is not  
17 viable for several reasons, including its size, its connection to the City’s Pure Water project, its  
18 emergency system connections, and contract restrictions. Exhibit 15, City of San Diego  
19 Comments on Proposed Decision.

20       33. At the hearing on December 1, 2023, the City presented testimony from Executive  
21 Assistant Director for the Public Utilities, Lisa Celaya, and Deputy Director of Finance for the  
22 Public Utilities Department, Adam Jones. Exhibit 16. Ms. Celaya explained why selling the  
23 City’s water system is not a viable option. Mr. Jones explained the impracticalities and  
24 difficulties of defaulting on \$1.29 million in debt and the financial interconnectedness of the City  
25 and its Water Utility. Exhibit 16, Hearing Transcript.

26                                   **THE COMMISSION’S 2023 DECISION**

27       34. On December 1, 2023, the Commission confirmed its September Proposed Decision,  
28 denying the City’s test claim and finding the City was not practically compelled to comply with



1 the Permit Amendment. Exhibit 17, Commission Decision adopted December 1, 2023.

2 35. The Decision noted the evidence submitted by the City at the December 1, 2023  
3 hearing:

4 Mr. Jones, Deputy Director of Finance for the claimant's Public Utilities Department,  
5 provided testimony on the potential consequences of the City defaulting on its  
6 outstanding water system debt, including the City needing to liquidate and sell assets  
7 funded by both the Water Utility Fund and the City's General Fund due to insufficient  
8 funds to repay the debt; the likelihood that the water system would have to be sold  
9 piecemeal and the challenges the City would face in operating portions of such a system;  
10 and the risk to the City's financial ratings and ability to issue bonds in the future.

11 Ms. Celaya, Executive Assistant Director for the claimant's Public Utilities Department,  
12 testified that the claimant cannot sell the public water system because it would be  
13 impossible for the City to find a buyer in light of the water system's size, complexity, and  
14 its interconnectedness with a water project that involves the City's wastewater treatment  
15 system (Pure Water San Diego project).

16 Exhibit 17, pp. 20-21.

### 17 **THE COMMISSION ERRED IN ITS DECISION**

18 36. By finding Permit Amendment No. 2017PA-SCHOOLS did not constitute a state  
19 mandate, the Commission abused its discretion under Code of Civil Procedure section 1094.5,  
20 subsection (b). The Commission failed to proceed in a manner required by law and its findings  
21 were not supported by substantial evidence as discussed below;

22 37. The Commission's finding that the City was not practically compelled to comply with  
23 the Permit Amendment was not supported by substantial evidence. The evidence showed that if  
24 the City failed to comply with the Permit Amendment, then (1) SWRCB could suspend the  
25 City's Water Permit, which would result in 1.3 million City residents losing access to water, and  
26 (2) the City would be in default of approximately \$890 million in debt. The evidence also  
27 showed it was not practical to sell the City's water system, for a multitude of reasons, to avoid  
28 complying with the Permit Amendment. Lastly, the evidence showed the City would be  
financially impacted if its Water Utility defaulted on its debt.

38. The Commission failed to proceed in a manner required by law by relying on an  
"imminency" requirement in finding the City was not practically compelled to comply with the  
Permit Amendment. Exhibit 16, pp. 4, 33, 41, 53. No statutory or case authority required that the



1 City prove its \$1.29 million debt would become “immediately” due to establish practical  
2 compulsion. *City of Sacramento v. State of California*, 50 Cal. 3d 51, 76 (1990) [setting forth the  
3 standard for determining legal compulsion]; See also *Department of Finance v. Commission on*  
4 *State Mandates (Kern)* (2003) 30 Cal.4th 727; *Coast Cmty. Coll. Dist. v. Comm'n on State*  
5 *Mandates*, 13 Cal. 5th 800, 807 (2022); *Department of Finance v. Commission on State*  
6 *Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

7 39. Part of the administrative record regarding Test Claim No. 17-TC-03-R is attached as  
8 Exhibits 1 through 17. Petitioner has requested that respondent Commission prepare a complete,  
9 true and accurate copy of the administrative record.

10 40. The Commission served its Decision on December 6, 2023. The Commission’s  
11 Decision became final on January 5, 2024 – when the 30-period to request reconsideration  
12 expired. Government Code § 17559(a); Code of Regulations § 1187.15(a). Accordingly,  
13 Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, petitioner City of San Diego prays as follows:

- 16 1. That a writ of mandate be issued pursuant to Government Code section 17559,  
17 subsection (B) and Code of Civil Procedure section 1094.5, directed to respondent Commission  
18 on State Mandates, ordering it to set aside its decision regarding Test Claim No. 17-TC-03-R and  
19 issue a new decision in accordance with this Court’s opinion;
- 20 2. That petitioners recover their costs incurred in this proceeding; and
- 21 3. For such other relief this Court deems proper.

22 Dated: March 26, 2024

MARA W. ELLIOTT, City Attorney

23  
24  
25 By 

Kevin B. King  
Deputy City Attorney

Attorneys for Petitioner,  
CITY OF SAN DIEGO