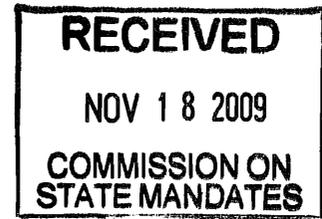


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November 13, 2009

Via FedEx

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Test Claim No.03-TC-04; 03-TC-20; 03-TC-21: Rebuttal to
Comments of Los Angeles Regional Water Quality Control Board
Staff*

Dear Ms. Higashi:

This letter constitutes the rebuttal of Claimants the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Vernon, Westlake Village, Azusa, Commerce, Bellflower, Covina, Downey, Monterey Park and Signal Hill ("Cities") to the comments dated October 19, 2009 filed by the staff of the Los Angeles Regional Water Quality Control Board ("RWQCB") to the proposed Parameters and Guidelines ("Ps&Gs") filed by the Cities and the County of Los Angeles.

The Cities first would observe that the RWQCB staff's letter attempts, improperly, to re-argue the merits of the Test Claim. For example, the letter asserts in its final paragraph that the trash receptacle requirements which the Commission found to be a state mandate "are a component of the federally mandated program that requires the states to ensure that municipalities control storm water pollution to the maximum extent practicable." This issue was extensively briefed and argued in the Test Claim, and the Commission decisively rejected the contention that the trash receptacle requirement was a "component of the federally mandated program." That contention was and is incorrect on the law and the facts, as the Commission determined.

RWQCB staff also urges the Commission to consider "the inequity of forcing the taxpayers throughout the State" to pay for trash receptacles in the Los Angeles Region. As the Commission and its staff know, the citizens of California amended the California

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Constitution specifically to avoid the inequity of forcing the residents of cities and counties to pay for the unfunded mandates of state agencies.

The Cities next turn to the comments of RWQCB staff on the draft Ps&Gs.

A. *The Claimants Did Not "Overstate" the Scope of the Trash Receptacle Requirement*

RWQCB staff argues, without citing to any evidence, that the trash receptacle requirement "does not . . . require any construction or installation." RWQCB staff contends that the Permittees under Order No. 01-182 are required merely to place "any type of receptacle" at the transit stops. This contention ignores the fact that for the requirement to be effective in an urban environment, the receptacles must be durable and theft-proof. "Any type of receptacle" will not meet those requirements. Proper design requires a permanent installation, in many cases a concrete pad to which the receptacle can be bolted, that will resist thieves and vandals. A missing receptacle will, of course, receive no trash and the purpose of the mandate, to "prevent litter from being washed into the storm drains," will not be met.

The requirement for construction and installation is intrinsic to the trash receptacle mandate, as set forth in the draft Ps&Gs. The fact that the Order does not on its face require construction or installation is irrelevant. To ensure that the Order's requirements were carried out, construction and installation was required. *See, e.g.*, Expert Declaration of Aras Ahmed of the County of Los Angeles Department of Public Works, attached as an exhibit to the County of Los Angeles' original Test Claim (03-TC-04) filed on September 2, 2003. Whatever steps are reasonably required to ensure the performance of the mandate, to place and maintain trash receptacles at transit stops, are subject to a subvention of state funds.

RWQCB staff further contends that maintenance should be limited "simply to ensure the receptacles are emptied when they are full, and not damaged to a point where they can no longer retain garbage." While maintenance clearly includes these steps, such activities cannot be done on a hit or miss basis. It makes no economic sense for city crews to wander the streets at random, looking for full or damaged receptacles. It is far less expensive, and more appropriate to achieve the mandate's purpose of reducing trash disposal to the gutters, for the receptacles to be routinely emptied, inspected and maintained.

Similarly, the RWQCB staff objection to "the expenditure of \$20,000" to identify the location of transit stops is, again, without merit. The exact cost of such an effort will, of course, vary from Claimant to Claimant. But, more importantly, transit stops are not located on "transit authority maps" (and RWQCB staff produced none to support its argument). These stops must be identified and updated, as bus routes change over time.

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Simply because the Order is directed to “water quality” does not change the fact that it specifically required the Claimants to install and maintain trash receptacles at each transit stop. The subvention of funds to cover the cost to comply with this mandate must include all those costs reasonably necessary to ensure compliance.

B. *The Trash Receptacle Requirement Applies to Claimants*

RWQCB staff argues that “Claimants Carson, Commerce, Downey, Monterey Park, Signal Hill, Vernon, and the County of Los Angeles are subject to the Los Angeles River Trash TMDL” while Beverly Hills is subject to the Ballona Creek Trash TMDL. RWQCB staff argues that because the trash receptacle requirement did not compel cities subject to these TMDLs, which took effect on August 28, 2002, they would not be subject to a subvention of funds unless they installed the receptacles prior to the TMDL effective date.

RWQCB staff, however, does not disclose the fact that for several of these Claimants, a portion (and in some cases, a substantial portion) of their jurisdictional areas is located *outside* of the watersheds subject to the TMDL requirements. This is true, for example, for the Cities of Carson, Downey and Signal Hill and for the County of Los Angeles. Since these portions would not be subject to the Los Angeles River or Ballona Creek Trash TMDLs, those Claimants were subject to the mandate found by the Commission in the Test Claim. RWQCB staff’s argument to the contrary, that “the requirement to place receptacles no longer applied to them,” is wrong as a matter of fact. (We note that the cities subject to the Trash TMDLs still might qualify if, as suggested by RWQCB staff, they installed and maintained trash receptacles prior to the effective date of the TMDLs or installed and maintained trash receptacles during the period of time that the Los Angeles River Trash TMDL was ineffective due to a legal challenge to the TMDL.)

In any event, the draft Ps&Gs seek a subvention of state funds for those Claimants that are completely or partially located within the watersheds not covered by the trash TMDLs. *See* Section II of the Ps&Gs (“The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 (“Permit”), to the extent that the same are not or were not subject to coverage under a trash TMDL”). Thus, the comments of RWQCB staff, to the extent that they refer to portions of the Cities that *are* covered by the trash TMDLs, are not relevant to the draft Ps&Gs and may be disregarded by the Commission.

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The Cities appreciate this opportunity to provide this rebuttal. Should you or Commission staff have further questions regarding the matters discussed in this letter, please contact us at the address noted above.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David W. Burhenn', with a long horizontal flourish extending to the right.

David W. Burhenn

cc: Mailing List

1
2 **PROOF OF SERVICE**

3 I am employed in Los Angeles County. I am over the age of 18 and not a party to this
4 action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

5 On November 13, 2009 I served the foregoing document, described as

6 **REBUTTAL OF CLAIMANT CITIES TO COMMENTS OF LOS ANGELES**
7 **REGIONAL WATER QUALITY CONTROL BOARD ON DRAFT**
8 **PARAMETERS AND GUIDANCE**

- 9 the original of the document
10 true copies of the document

11 in separate sealed envelopes addressed as follows:

12 See Attached Service List

13 **BY U.S. MAIL:** I sealed and placed such envelope for collection and mailing to be
14 deposited on the same day at Los Angeles, California. The envelopes were mailed with postage
15 thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and
16 processing corresponding for mailing. Under this practice, documents are deposited with the U.S.
17 Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at
18 Los Angeles, California in the ordinary course of business.

19 **BY FEDERAL EXPRESS:** I am familiar with the firm's practice of collecting and
20 processing correspondence for delivery via Federal Express. Under that practice, it would be picked
21 up by Federal Express on that same day at Los Angeles, California and delivered to the parties as
22 listed on this Proof of Service the following business morning.

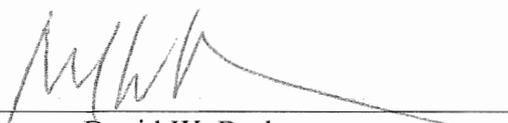
23 **BY FACSIMILE:** I caused the above referenced document to be transmitted via facsimile
24 to the parties as listed on this Proof of Service.

25 **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the office
26 of the addressee(s).

27 **STATE:** I declare under penalty of perjury under the laws of the state of California that the
28 above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

Executed on November 3, 2009 at Los Angeles, California.

25
26 
27 David W. Burhenn

Commission on State Mandates

Original List Date: 9/29/2003
Last Updated: 9/14/2009
List Print Date: 09/14/2009
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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<p>Mr. Sergio Ramirez City of Foster City/Estero Municipal Improvement District 100 Lincoln Centre Drive Foster City, CA 94404</p>	<p>Tel: (650) 286-3544 Fax:</p>