



December 6, 2016

Mr. Leon Page  
County of Orange  
333 West Santa Ana Blvd.  
Santa Ana, CA 92702-1379

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

**RE: Notice of Reply to Request for Conference**

*Santa Ana Region Water Permit, 09-TC-03*

California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030

County of Orange, Orange County Flood Control District, Cities of Anaheim, Brea,  
Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine,  
Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Co-Claimants

Dear Mr. Page:

On November 23, 2016, the Commission on State Mandates (Commission) received the County of Orange and Orange County Flood Control District comments asserting representation of “all other Test Claim co-claimants” with regard to the Notice of Incomplete Joint Test Claim Filing (Notice) in the above-entitled matter.

In the Notice, Commission staff expressly requested all the co-claimants on this matter (County of Orange, the Orange County Flood Control District, and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park) to file revised test claim forms pursuant to California Code of Regulations, title 2, section 1183.1(g) indicating that this Test Claim is a joint effort between two or more claimants and *designate a single claimant representative*, common to all joint claimants, in *Section 3. Claimant Representative Information* on the test claim form. Based on your assertion that you are speaking for all of the co-claimants, the co-claimants must have agreed to your representation and should have no problem revising their forms for the record. Please also note for all matters, that a party must designate *in writing* the authorized representative to act as its *sole representative* and that any change in representation shall be authorized by the party *in writing and filed and served* in accordance with section 1181.3 of the Commission’s regulations. (See 2 CCR 1187.7.)

While December 19, 2016 is the date to cure the filing for this issue and the other deficiencies of evidence cited in the Notice, the Commission has not received any designation of representation from the joint claimants and therefore can only consider your November 23, 2016 comments as representing the position of County of Orange and the County of Orange Flood Control District, but not the other joint-claimants, at this time. This illustrates one of the reasons behind the rule that joint claimants must designate a single representative.

In addition, the County of Orange and Orange County Flood Control District allege that there is sufficient evidence in the record regarding the timeliness of the Test Claim filing, and description of increased costs and a statewide estimate of costs. However, nowhere in the record do the parties assert, under penalty of perjury, a date on which costs were first incurred under the 2009 Order. There is a spreadsheet purporting to show some costs incurred for some of the

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countywide shared activities sometime in 2009-2010, but the spreadsheet does not identify the date costs were first incurred nor is it clear from the record whether these were the first costs incurred by any of the co-claimants to perform activities alleged to impose a state-mandate in the test claim. In addition, the spreadsheet is considered hearsay. It is a compilation of data prepared by an unidentified person. The test claim was filed more than 12 months after the effective date of the 2009 Order. Thus, evidence is required to support the assertion of the date costs were *first* incurred pursuant to Government Code section 17551(c) and section 1183.1(c) of the Commission's regulations. All written representations of fact must be signed under penalty of perjury pursuant to section 1187.5 of the Commission's regulations.

Government Code section 17559(b) provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record. This requires that each finding of fact that the Commission makes (including timeliness, which is an issue of fact, and whether there are costs mandated by the state, which is a mixed issue of law and fact) must meet the *Topanga* standard.<sup>1</sup> In *Topanga* the court explained:

Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision. Subdivision (b) of Code of Civil Procedure section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether 'there was any prejudicial abuse of discretion.' Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision 'is not supported by the findings, or the findings are not supported by the evidence.' (Emphasis added.) Subdivision (c) declares that 'in all . . . cases' (emphasis added) other than those in which the reviewing court is authorized by law to judge the evidence independently, 'abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.' . . .

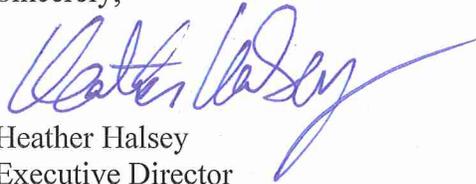
The County of Orange and Orange County Flood Control District request a conference if Commission staff does not "agree that the information submitted with this letter addresses those two points." Commission regulations allow the parties to request an informal conference to "identify issues and determine methods of resolving those issues." (Cal. Code Regs., tit. 2, § 1187.4(c)(5).) However, a conference is not necessary at this juncture since the Notice fully explains the evidentiary requirements to resolve the specified issues and cure the filing. Pursuant to Government Code section 17559(b) and section 1183.6(a) of the Commission regulations, Commission staff must rely on evidence in the record, "which shall include but not be limited to a review of the written comments filed."

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<sup>1</sup> *Topanga Association for a Scenic Community v. County Of Los Angeles* (1974) 11 Cal.3d 506.

This matter is tentatively set for hearing on March 24, 2017. If the co-claimants do not file additional evidence regarding the above-stated issues, Commission staff will consider the existing record for the Draft Proposed Decision, which will issue at least eight weeks before the hearing.

Sincerely,



Heather Halsey  
Executive Director



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 6, 2016, I served the:

**Notice of Reply to Request for Conference**

*Santa Ana Region Water Permit, 09-TC-03*

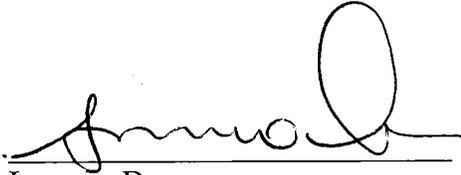
California Regional Water Quality Control Board, Santa Ana Region,

Order No. R8-2009-0030

County of Orange, Orange County Flood Control District, Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Co-Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 6, 2016 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

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# COMMISSION ON STATE MANDATES

## Mailing List

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**Claim Number:** 09-TC-03

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City of Costa Mesa  
City of Cypress  
City of Fountain Valley  
City of Fullerton  
City of Huntington Beach  
City of Irvine  
City of Lake Forest  
City of Newport Beach  
City of Placentia  
City of Seal Beach  
City of Villa Park  
County of Orange  
Orange County Flood Control District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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