



April 19, 2017

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330 West 20th Avenue
San Mateo, CA 94403

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Director, Water Resources
Division Manager
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Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young

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City Engineer
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Mr. Jimmy Tan
Public Services Director
City of San Bruno
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San Bruno, CA 94066

Mr. Charles Taylor
Engineering Services Manager
City of Menlo Park
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Menlo Park, CA 94025-3483

Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young

Ms. Nawel Voelker	Mr. Victor Voong	Mr. Howard Young
Acting Director of Finance	Associate Engineer	Director of Public Works
City of Belmont	City of Burlingame	Town of Portola Valley
One Twin Pines Lane	501 Primrose Road	765 Portola Road
Belmont, CA 94002	Burlingame, CA 94010	Portola Valley, CA 94028

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

RE: Notice of Incomplete Joint Test Claim Filing

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f, 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05
Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

Dear Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young:

The Commission on State Mandates (Commission) received the Test Claims filed by the City of Brisbane (10-TC-01) on October 11, 2010; the City of Alameda (10-TC-02) on October 13, 2010; the County of Santa Clara (10-TC-03) on October 14, 2010; and the City of San Jose (10-TC-05) on November 30, 2010. All four Test Claims allege reimbursable state-mandated activities arising from NPDES permit No. CAS612008, Order R2-2009-0074 (Order), adopted by the San Francisco Bay Regional Water Quality Control Board (regional board).

On May 2, 2011, the Commission received the City of Alameda's (10-TC-02) Designation of Co-Claimants adding the County of Alameda and the cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Pleasanton, San Leandro, Union City, the Alameda County Flood Control and Water Conservation District, and the Alameda County Flood Control and Water Conservation District, Zone 7 as co-claimants. In addition to the broad declaration on behalf of all of the above-named co-claimants by Mr. James Scanlin, the declarations previously filed with the rejected, duplicative, test claims filed by the above-named co-claimants have been retained for the record as requested by Mr. Gregory Newmark.

On May 27, 2011, the Commission received the City of Brisbane's (10-TC-01) Designation of Co-Claimants adding the cities and towns of Atherton, Belmont, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside, as well as unincorporated San Mateo County, and the San Mateo County Flood Control District as co-claimants. In addition to the broad declaration on behalf of all of the San Mateo jurisdictions by Mr. Jon Konnan, the following declarations previously submitted with the test claims filed by the above-named San Mateo County jurisdictions but returned on the ground that the City of Brisbane's Test Claim was the first filed have been retained for the record as requested by Mr. Harold Toppel: San Mateo County Flood Control District, Town of Atherton, City of Belmont, Town of Colma, City of Foster City, City of Half Moon Bay, Town of

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Hillsborough, City of Menlo Park, City of Millbrae, City of San Bruno, City of San Carlos, City of San Mateo, Town of Woodside as requested. However, the County of San Mateo and the City of Daly City did not include their own declarations to support their alleged costs, in addition to the broad declaration by Mr. Jon Konnan, as was indicated in their respective cover letters. Further, Commission staff cannot find any declarations or other materials to support a test claim from the following jurisdictions since, they do not appear to have filed a test claim: City of Burlingame, City of East Palo Alto, City of Pacifica, Town of Portola Valley, City of Redwood City, and the City of South San Francisco.

Although the test claims were deemed complete on November 17, 2010, November 18, 2010, November 15, 2010, and December 12, 2010, respectively, an initial review of the filings by legal staff revealed that they are incomplete because they: (1) do not meet the requirements in Title 2, California Code of Regulations, section 1183.1(a) specifying personnel authorized to file a test claim on behalf of a local agency; (2) are missing a detailed description of increased costs and a statewide estimate of costs as required by Government Code section 17553; and (3) in the case of 10-TC-01, are missing declarations to support the alleged costs for some of the named co-claimants.¹ However, it may be possible to cure these test claim filings as described below.

Who May File a Test Claim on Behalf of a Local Agency?

Pursuant to section 1183.1(a) of Commission regulations, only specified authorized local agency officials may file on behalf of a city, county, or special district.

For counties, only a “county auditor, auditor-controller, or director of finance who has assumed the duties of controller, may file on behalf of a county.” In this filing, Ms. Sylvia Gallegos, Deputy County Executive may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form because this position is not listed in section 1183.1(a)(1), nor is it clear that this individual has authority to legally bind the County. However, anyone who specifically requests to be on the mailing list for a matter is included on all service of written materials and may participate in the mandate determination process.

For cities, pursuant to section 1183.1(a)(2) of Commission regulations, only a “city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council, may file on behalf of a city.” Therefore, only an official authorized in section 1183.1(a)(2) of the Commission’s regulations may be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form. Thus, Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Estes, Ewing, Fajeau, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Masjedi, Mattas, Moneda, Pio Roda, Quick, Reyes, Rose, Rubens, Tan, Taylor, Voong, Willis, and Young may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may they act as the authorized signatory for the purposes of *Section 8. Claim Certification* of the test claim form because their

¹ A completeness review of a test claim is not intended as a legal review, and in fact, does not go through legal review.

Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young

positions are not listed in section 1183.1(a)2, nor is it clear that they have authority to legally bind the cities. Again, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials.

For special districts, pursuant to section 1183.1(a)(5) of Commission regulations, only a “general manager or other officer with authority delegated by the governing body by ordinance or resolution may file on behalf of a special district.” Therefore, only an official authorized in section 1183.1(a)(5) of the Commission’s regulations may be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form. Thus, Mr. James Porter, Director of Public Works, and Ms. Sharon Gosselin, Associate Environmental Compliance Specialist, may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may either act as the authorized signatory for purposes of *Section 8. Claim Certification* of the test claim form because neither is the general manager, nor is it clear that either has authority to legally bind the San Mateo County Flood Control District (10-TC-01) or the Alameda County Flood Control and Water Conservation District (10-TC-02), respectively. Again, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials.

Further, *Section 8. Claim Certification* of the test claim form may be signed by a different person (i.e. another *authorized* local agency official specified section 1183.1(a) of Commission regulations) than is indicated in *Section 2. Claimant Information* so long as the declarant’s address, telephone number, and e-mail address are also provided. (Government Code 17553(b)(4).) Note that the designated representative may not sign here because this is also the form that provides for the official designation of the representative by the claimant and only the claimant may make such a designation.

A Detailed Description of Costs Is Required.

Government Code section 17553 specifies that all test claims shall contain at least the following elements:

- (A) *A detailed description of the new activities and costs that arise from the mandate.*
- (B) *A detailed description of existing activities and costs that are modified by the mandate.*
- (C) *The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.*
- (D) *The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*
- (E) *A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*

Under *Section 5. Written Narrative*, the claimants are directed to:

Include a statement that the actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), **and** include all of the following elements for each statute or executive order alleged:

Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

For this Test Claim to be complete, the detailed costs description set forth in Government Code section 17553, must be included in the narrative.

For a Joint Test Claim, Claimants Must Agree on All Issues of the Test Claim.

A crucial requirement for a joint test claim is that “claimants agree on all issues of the test claim.” (Title 2, California Code of Regulations, section 1183.1(g)(2).) This agreement should be indicated in the narrative and declarations.

Curing This Test Claim

1. A revised test claim form from each co-claimant, except for Alameda County Flood Zone 7, the cities of Daly City, Half Moon Bay, Menlo Park, and San Jose and the town of Atherton, that:
 - A. Provides claimant information of an individual authorized to file on behalf of the agency under section 1183.1 of the Commission’s regulations in *Section 2. Claimant Information*.
 - B. Provides a signature and complete contact information of an individual authorized to file on behalf of the agency pursuant to section 1183.1 of the Commission’s regulations in *Section 8. Claim Certification*.
 - C. Designates a single claimant representative, common to all joint claimants, in *Section 3. Claimant Representative Information* on the test claim form pursuant to section 1183.1(g)(3) of Commission regulations.²

² It has been noted that most of the test claim forms filed for 10-TC-01 and 10-TC-02 have already designated a single representative as required in *Section 3: Claimant Representative Information*: Mr. Richard Napier (10-TC-01), except for the City of Brisbane; and Mr. Gregory Newmark (10-TC-02), except for the City of Alameda to represent the joint claimants. The revised forms must include a single claimant representative for each test claim. Although a Change of Representative for the City of Alameda was filed on December 14, 2010, the designation was made by the City Attorney and not by an individual listed as eligible to file a test claim and designate a claimant representative. In addition, a Change of Representative for the County of Santa Clara (10-TC-03) was filed on December 1, 2016, however it was made by the

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2. Revised written narratives and declarations (or in the case of City of Burlingame, City of East Palo Alto, City of Pacifica, Town of Portola Valley, City of Redwood City, and the City of South San Francisco, initial declarations) that indicate that they agree on all issues of the test claim and that provide a detailed description of the costs that are modified by the alleged mandate including the *actual* increased costs incurred by each co-claimant during the fiscal year for which the joint test claim was filed as well as the actual or estimated annual costs that will be incurred by each co-claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed. In addition, please provide the statewide cost estimate (in this case the “statewide cost” is the cost for all of the local agency co-permittees, whether named or not, for the alleged new program or higher level of service imposed by the permit at issue) for increased costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed.

Please note that section 17553(b)(2) of the Government Code requires the following with regard to the written narrative:

The written narrative shall be supported with declarations under penalty of perjury, based on the declarant’s personal knowledge, information or belief, and signed by persons who are authorized and competent to do so as follows:

- (A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- (B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- (C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.
- (D) If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

County Counsel and not by an individual listed as eligible to file a test claim and designate a claimant representative.

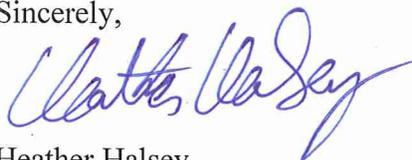
Messrs. and Mss. Aghamir, Akagi, Almaguer, Ameri, Bakker, Bessey, Boyd, Breault, Donohue, Duenas, Duerig, Estes, Ewing, Fajeau, Falk, Gallegos, Gosselin, Greenwood, Guarnieri, Guinan, Kaufman, Lim, Martel, Masjedi, Mattas, Moneda, Napier, Newmark, Pio Roda, Porter, Quick, Reyes, Rojas, Rose, Rodericks, Rubens, Snideman, Tan, Taylor, Voelker, Voong, Willis, and Young

Retaining Your Original Filing Date

To retain the original filing dates, please refile *only* the following required elements to cure these consolidated test claims:³ (1) revised test claim forms from each co-claimant; and (2) written narratives and declarations, as specified above, which will supersede any initial filings with the Commission within 30 days of the date of this letter by **May 19, 2017**. If a complete test claim filing is not received within 30 calendar days from the date of this letter, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).) As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

The filings may be submitted electronically via the Commission's e-filing system pursuant to section 1181.3 of the Commission's regulations and will replace the specified elements of the original filings. Please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.php

Sincerely,



Heather Halsey
Executive Director

³ Please do not refile the supporting documentation, which is already nearly 1600 pages (and is now part of a record of about 70,000 pages). Commission staff will replace the current test claim forms, written narratives, and declarations with the revised ones and will append any additional supporting documentation filed as evidence of costs to the back of the supporting documentation currently on file.

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 April 19, 2017, I served the:

- Notice of Incomplete Joint Test Claim Filing issued April 19, 2017
- City of Brisbane's Addition of Co-Claimants filed May 27, 2011
- City of Alameda's Co-Claimants' Declarations: City of Albany, County of Alameda, Alameda County Flood Control and Water Conservation District, Alameda County Flood Control and Water Conservation District, Zone 7, City of Berkeley, City of Dublin, City of Emeryville, City of Fremont, City of Hayward, City of Livermore, City of Newark, City of Oakland, City of Pleasanton, City of San Leandro, City of Union City, and James Scanlin in Support of Test Claim, filed October 14, 2010
- City of Brisbane's Co-Claimants' Declarations: San Mateo County Flood Control District, Town of Atherton, City of Belmont, Town of Colma, City of Foster City, City of Half Moon Bay, Town of Hillsborough, City of Menlo Park, City of Millbrae, City of San Bruno, City of San Carlos, City of San Mateo, Town of Woodside, filed October 12, 2010-October 18, 2010

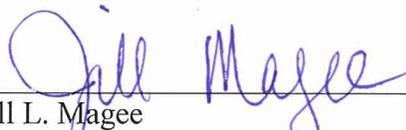
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d,
C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and
C.12.f,*

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

by making them available on the Commission's website and providing notice of how to locate them 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 April 19, 2017 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/5/17

Claim Number: 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Matter: California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii, and iv, C.8.f, C.8.g, C.10.a.i, ii, iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f

Claimant: Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara

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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Leticia Alvarez, *City of Belmont*
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lalvarez@belmont.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Tamarin Austin, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd Floor, Sacramento, CA 95814

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