



September 22, 2017

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Mr. Samuel Wilson
Director of Public Works,
Water & Development Services
City of Vernon
4305 Santa Fe Avenue
Vernon, CA 90058

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

RE: Second Notice of Incomplete Joint Test Claim

Los Angeles Region Water Permit – Cities of Los Angeles County, 13-TC-01
California Regional Water Quality Control Board, Los Angeles Region,
Order No. R4-2012-0175

Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Covina, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, San Marino, Santa Clarita, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier, Claimants

Dear Messrs. Gest, Rodriguez, and Wilson:

The Commission on State Mandates (Commission) received the Test Claim filed by the cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Covina, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, San Marino, Santa Clarita, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier (claimants) on June 30, 2014. The Test Claim alleges reimbursable state-mandated activities arising from NPDES permit No. CAS004001, Order R4-2012-0175 (Order), adopted by the Los Angeles Regional Water Quality Control Board (regional board).

Although the Test Claim was deemed complete on July 10, 2014, an initial review of the filing by legal staff revealed that it was incomplete because it: (1) was filed beyond the statute of limitation because it was filed more than 12 months beyond the effective date of the Order; (2) did 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; and (3) was missing a detailed description of increased costs and a statewide estimate of costs as required by Government Code section 17553.¹

On August 10, 2017, the joint claimants, except for the City of Covina, filed a revised test claim. Commission staff finds the test claim is still incomplete because:

- (1) Though Mr. Matthew Rodriguez, Interim City Administrator, is listed under *Section 2. Claimant Information* and *Section 8. Claim Certification* on behalf of the City of Commerce, Mr. Rodriguez is not the city manager or the director of finance for the City of Commerce and no ordinance or resolution from the city council has been provided indicating that the appropriate authority required by section 1183.1 of the Commission's

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

regulations has been delegated to him to bind the City generally, or with respect to all mandate issues.

- (2) Though Mr. Samuel Wilson, Interim Director of Public Works for the City of Vernon, is listed in *Section 2. Claimant Information* and *Section 8. Claim Certification* on behalf of the City of Vernon, and a resolution from the city council has been provided indicating that the city has determined that the Director of Community Services and Water is authorized to “sign, certify, and electronically submit permit registration documents, notices of termination, and any other documents, reports, or information required by the Municipal National Pollutant Discharge Elimination System (“NPDES”) permit and any NPDES permit related document which pertains to the City of Vernon and on the City of Vernon’s behalf,”² Mr. Wilson is not the city manager or the director of finance of the City of Vernon and no ordinance or resolution has been provided indicating that the appropriate authority required by section 1183.1 of the Commission’s regulations has been delegated to him to bind the City generally, or with respect to all mandate issues. Mr. Wilson may indeed be the best person at the City to provide declarations regarding the implementation of the test claim NPDES permit, however, he is not the person authorized to act as city manager or director of finance and to bind the city in legal matters generally or mandate issues more specifically, as is required to file a test claim under the Commission’s regulations.
- (3) A finding on the timeliness of the filing cannot be made because *the date* of first incurred costs for each new activity and modified existing activity alleged to be mandated by the state is not specified or associated with any of the activities described either in the written narrative or in the declarations as is required by the Government Code and the Commission’s regulations. Moreover, no evidence (neither a declaration based on personal knowledge or other documentary evidence such as contracts, receipts, or meeting minutes that could go to prove that a cost was incurred) has been filed to support such a finding. The statements in the declaration regarding when costs were first incurred are not specific and, because they are not based on personal knowledge, are hearsay.

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

Pursuant to section 1183.1(a)(2) of Commission regulations, only specified authorized city officials may file on behalf of a city.

Section 1183.1(a)(2) states that 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, Mr. Rodriguez and Mr. Wilson 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 since they are not city managers or directors of finance and no resolution or ordinance of the cities have been filed with the Test Claim for the City of Commerce, and an ordinance has been filed for the City of Vernon but it

² Claimants’ Response to the Notice of Incomplete Joint Test Claim Filing, pages 22-23.

does not show that the city council designated the Director of Public Works to represent and legally bind the city generally or on mandate issues. However, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials and these individuals could continue to receive and monitor all correspondence on this matter.

Further, *Section 8. Claim Certification* of the test claim form may be signed by a different person (i.e. another *authorized* city official specified section 1183.1(a)(2) 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.

To Be Considered Timely Filed

Government Code 17551(c) requires a local agency to file a test claim "not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183 of the Commission regulations state that "[f]or the purposes of claiming based on *the date* of first incurred costs, 'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were *first incurred* by the test claimant." (Emphasis added.)

The revised written narrative indicates that the permit became effective on December 28, 2012 and that claimants first incurred costs to implement the Permit during fiscal year 2012-2013 but does not specify the date of first incurred costs or associate the date of first incurred costs with any of the activities or costs alleged to be mandated by the state as is required by Government Code section 17551(c).³ The revised declarations filed on behalf of the cities similarly indicate generally, for each activity alleged to be mandated by the state, "costs were first incurred...in January 2013, upon or shortly after the permit became effective,"⁴ but none specify the date costs were first incurred and the declarations of costs and when those costs were incurred are based only on information or belief - not on personal knowledge and are therefore hearsay. As discussed below, a finding of the Commission may not be based on hearsay evidence alone.

It is settled principle that administrative agencies have only such powers as have been conferred upon them, expressly or by implication, by constitution or statute. An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. When an administrative agency acts in excess of the powers conferred upon it, its action is void.⁵ The Commission is a quasi-judicial administrative agency, whose authority is provided solely by statute. Pursuant to Government Code section 17551(b), the Commission's

³ Claimants' Response to the Notice of Incomplete Joint Test Claim, page 32.

⁴ Claimants' Response to the Notice of Incomplete Joint Test Claim, pages 68-389; City of Huntington Park Revised Declaration in Response to the Notice of Incomplete Joint Test Claim, pages 3-18. In your response, please remove the duplicate test claim form for the City of Vernon that appears at page 358.

⁵ *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *Graves v. Commission on Professional Competence* (1976) 63 Cal.App.3d 970, 976.

review of a test claim may be had “*only if*” the test claim is filed within the time limits specified in sections 17551(c), 17573, and 17574.

The Narrative and Any Allegations of Fact Must Be Supported with Evidence in the Record.

Government Code section 17553(b)(2)(A-D) specifies that 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.

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 whether there are costs mandated by the state, which is a mixed issue of law and fact) must meet the *Topanga* standard.⁶ 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’ 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.’ . . .

⁶ *Topanga Association for a Scenic Community v. County Of Los Angeles* (1974) 11 Cal.3d 506.

Finally, Section 1187.5(a) of the Commission's regulations provides in relevant part: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions."

The revised declarations provided on behalf of the cities indicate that each makes these declarations, with regard to the statements on first incurring costs, based only on information and belief.⁷ Although it is true that declarations based on information and belief are admissible in Commission proceedings and may be used to supplement or explain other evidence to support a finding of fact, they are hearsay evidence and thus not sufficient in themselves to support a finding of fact unless they would be admissible over a hearsay objection in a civil proceeding.

For this Test Claim to be complete, the detailed costs descriptions set forth in Government Code section 17553, must be supported by evidence: declaration(s) signed under penalty of perjury, based on the declarant's personal knowledge or other evidence (such contracts, receipts, meeting minutes, and the like).

Therefore, the Commission, by statute, does not have jurisdiction over this Test Claim because based on the evidence in the record, the claim was filed beyond the statute of limitations as a matter of law. Administrative orders are void when rendered without fundamental jurisdiction, or in excess of the agency's statutory powers, and may be collaterally attacked at any time.⁸

Curing This Test Claim

1. For each co-claimant, file a revised written narrative and declaration(s) signed under penalty of perjury based on the declarant's personal knowledge or provide other evidence to support a finding of the date when costs were first incurred for each permit section pled.
2. Please also file a revised test claim form from the cities of Commerce, Covina (if Covina intends to remain a co-claimant) and Vernon, 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. In the event that the individual filing on behalf of the city is not the city manager or director of finance, provides the delegation by ordinance or resolution from the

⁷ Claimants' Response to the Notice of Incomplete Joint Test Claim, pages 68-389; City of Huntington Park Revised Declaration in Response to the Notice of Incomplete Joint Test Claim, pages 3-18.

⁸ *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 677-679; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 234; *City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400.

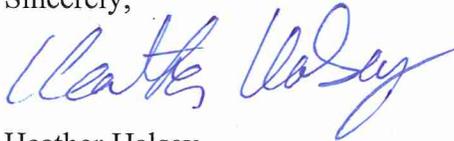
city council indicating that they may file on behalf of a city pursuant to section 1183.1 of the Commission's regulations.⁹

Retaining Your Original Filing Date

To retain the original filing date, please refile *only* the following required elements to cure this Test Claim:¹⁰ (1) a revised written narrative and declarations or other evidence to support a finding of first incurring costs, (2) revised test claim forms from the Cities of Commerce, Covina and Vernon, as specified above, which will supersede any prior filings with the Commission within 30 days of the date of this letter by **October 23, 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).

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

Sincerely,



Heather Halsey
Executive Director

⁹ It has been noted that the test claim forms filed for 13-TC-01 have already designated a single representative as required *in Section 3: Claimant Representative Information*, in this case Mr. Howard Gest, to represent the joint claimants. The revised forms should also include a single claimant representative.

¹⁰ Please do not refile the correct test claim forms, declarations not requiring revision, or supporting documentation, which is already nearly 800 pages. Commission staff will replace the current test claim forms, written narrative, and declarations with the revised ones, as appropriate, 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 September 22, 2017, I served the:

- **Second Notice of Incomplete Joint Test Claim issued September 22, 2017**
Los Angeles Region Water Permit – Cities of Los Angeles County, 13-TC-01
California Regional Water Quality Control Board, Los Angeles Region,
Order No. R4-2012-0175
Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Covina, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, San Marino, Santa Clarita, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier, 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 September 22, 2017 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/21/17

Claim Number: 13-TC-01

Matter: Los Angeles Region Water Permit - Cities of Los Angeles County

Claimants: City of Agoura Hills
City of Bellflower
City of Beverly Hills
City of Carson
City of Cerritos
City of Commerce
City of Covina
City of Downey
City of Huntington Park
City of Lakewood
City of Manhattan Beach
City of Norwalk
City of Pico Rivera
City of Rancho Palos Verdes
City of Redondo Beach
City of San Marino
City of Santa Clarita
City of Santa Fe Springs
City of Signal Hill
City of South El Monte
City of Vernon
City of Westlake Village
City of Whittier

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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