



September 11, 2017

Mr. Justyn Howard
Department of Finance
915 L Street
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Mr. Michael Lauffer
State Water Resources Control Board
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Mr. Gregory Newmark
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555 12th Street, Suite 1500
Oakland, CA 94607

Mr. Bruce Wolfe
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

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

Re: **Notice of Complete Test Claim Filing, Schedule for Comments, Request for Administrative Record, and Notice of Tentative Hearing Date**
*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049, 16-TC-03
City of Union City, Claimant*

Dear Mr. Howard, Mr. Lauffer, Mr. Newmark, and Mr. Wolfe:

On June 30, 2017, the Commission on State Mandates (Commission) received a test claim filed by the City of Union City (claimant) on the above-captioned matter. Upon review, Commission staff found the test claim to be incomplete and notified the claimant on July 14, 2017.

On August 14, 2017 the claimant cured the test claim filing. Upon review, Commission staff finds this test claim complete and it retains the original filing date of June 30, 2017, in accordance with section 1183.1(e) of the Commission's regulations (California Code of Regulations, Title 2).

The Commission is now requesting parties, interested parties, and interested persons to comment on the Test Claim as specified below.

Review of Test Claim

Parties, interested parties, and interested persons receiving this letter are requested to analyze the merits of the Test Claim and to file written comments on or before **October 11, 2017** in accordance with sections 1183.2 and 1181.3 of the Commission's regulations. Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) If new representations of fact are made, they must be supported with documentary evidence filed with the comments on the test claim. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹ Requests for extensions of time to file comments may be filed in accordance with section 1187.9 of the Commission's regulations.

¹ Government Code section 17559(b), which 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
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On August 29, 2016, the California Supreme Court filed its modified opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles) (2016) 1 Cal.5th 749. Please include in your comments on the Test Claim, briefing regarding how that decision should apply with regard to activities that the boards assert are required to meet the maximum extent practicable (MEP) requirement of the federal Clean Water Act. Please include a discussion of how the decision applies with regard to the specific activities alleged to impose a state mandate in this case.

Claimant's Rebuttal

Written rebuttals to written comments concerning this Test Claim may be filed and served in accordance with section 1181.3 of the Commission's regulations within 30 days of service of the written comments. (Cal. Code. Regs., tit. 2 § 1183.3.) Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) If new representations of fact are made, they must be supported with documentary evidence filed with the rebuttal. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.²

Request for Administrative Record

In addition, this letter is a request that the San Francisco Bay Regional Water Quality Control Board and the State Water Resources Control Board (as applicable) provide copies of:

- a) The official administrative record of the California State Water Quality Control Board, San Francisco Bay Region permit order no. R2-2015-0049, National Pollutant Discharge Elimination System (NPDES) no. CAS612008; and
- b) The official administrative record of the California State Water Resources Control Board permit order no. R2-2015-0049 (NPDES no. CAS612008).

Specifically, the Commission requests the record that was before the boards when they adopted permit order no. R2-2015-0049/NPDES no. CAS612008 and on which they based their decision with regard to the permit requirements.

Please provide these documents as soon as possible but not later than **October 11, 2017**.

Process for Filing Comments

The Commission has prepared a mailing list of parties, interested parties, and interested persons for this Test Claim. The mailing list will be uploaded to the Commission's website and an e-mail notification of its availability will be sent to everyone on the list who has provided an e-

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.

² Government Code section 17559(b), which 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.

Mr. Howard, Mr. Lauffer, Mr. Newmark, and Mr. Wolfe

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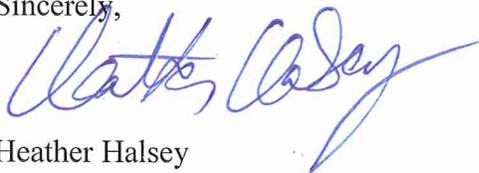
mail address. A hard copy will be provided to persons who have not provided an e-mail address and to any person who requests a hard copy. (Cal. Code. Regs., tit. 2 § 1181.4.)

You are advised that if written materials are filed in hard copy, the filing must simultaneously be served on everyone on the mailing list, and be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. For instructions on electronic filing, please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.php. The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.3.

Tentative Hearing Date

This Test Claim is tentatively set for hearing on **September 28, 2018**.

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 September 11, 2017, I served the:

- **Notice of Complete Test Claim Filing, Schedule for Comments, Request for Administrative Record, and Notice of Tentative Hearing Date issued September 11, 2017**
- **Test Claim filed by City of Union City on June 30, 2017, cured August 14, 2017**
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049, 16-TC-03
City of Union City, Claimant

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 11, 2017 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/8/17

Claim Number: 16-TC-03

Matter: California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2015-0049

Claimant: City of Union City

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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