



September 12, 2017

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Ms. Hope Smythe
Santa Ana Regional Water Quality
Control Board
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Notice of Complete Joint Test Claim, Removal From Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date

*Santa Ana Region Water Permit – County of San Bernardino, 10-TC-10
County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, Co-Claimants*

Dear Messrs. Burhenn, Howard, and Lauffer, and Ms. Smythe:

The Commission on State Mandates (Commission) received the joint test claim filed by the County of San Bernardino, the San Bernardino County Flood Control District, and the Cities of Big Bear Lake, Chino, Chino Hills, Colton, Fontana, Highland, Montclair, Ontario, and Rancho Cucamonga (co-claimants) on June 30, 2011 and corrected on July 29, 2011. The Test Claim alleges reimbursable state-mandated activities arising from the NPDES permit No. CAS618036, Order R8-2010-0036 (Order), adopted by the California Regional Water Quality Control Board, Santa Ana Region (regional board). The test claim permit became effective on the date of its adoption, January 29, 2010.

Although the filing was deemed complete on July 12, 2011, a review of the filing by legal staff revealed that the filing 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 July 31, 2017, as requested, the claimants, except for the City of Colton, filed revised test claim forms, a revised narrative statement, and declarations to replace the original test claim forms, narrative statement, and declarations filed with the Commission. Commission staff has replaced the revised pages of the Test Claim and upon review, finds this joint test claim filing is

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

complete and retains the original filing date of June 30, 2011 in accordance with section 1183.1(f) of the Commission's regulations.

Removal from Inactive Status

On March 1, 2013, claimant filed a request to place this matter on inactive status, which was granted. However, now that the Supreme Court has filed its decision and the test claim filing has been completed, this matter is removed from inactive status.

Request for Comments on the 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 **Wednesday, October 12, 2017** in accordance with sections 1183.2 and 1187.5 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.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.² Please address the mandate issues raised in the test claim and specifically identify any state or federal funding or local fee authority that has been appropriated or is available to fund the costs alleged to be mandated by the state.

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.

Claimants' Rebuttal

Claimants may file and serve rebuttals to written comments concerning this Test Claim 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 written representations of fact are made, they must be supported with documentary evidence submitted 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.³

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.

³ 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

Renaming of Matter

Currently, this matter is known as “*Santa Ana Region Water Permit – County of San Bernardino.*” However, Commission staff is renaming this matter for ease of tracking and consistent with other stormwater NPDES permit test claims. This matter will now be designated *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0036, 10-TC-10.* Please use this designation in all future correspondence in reference to this matter.

Request for Administrative Record

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

- a) The official administrative record of the California State Water Quality Control Board, Santa Ana Region permit order no. R8-2010-0036, National Pollutant Discharge Elimination System (NPDES) no. CAS618036; and
- b) The official administrative record of the California State Water Resources Control Board permit order no. R8-2010-0036 (NPDES no. CAS618036).

Specifically, the Commission requests the record that was before the boards when they adopted permit order no. R8-2010-0036/NPDES no. CAS618036 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 12, 2017.**

Filing Written Materials

All written representations of fact made to the Commission are required to be supported by documentary or testimonial evidence submitted under penalty of perjury. (Cal. Code Regs., tit. 2, 1187.5.)

The Commission's regulations require that written materials filed with the Commission be simultaneously served on all parties, interested parties, and interested persons on the mailing list, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, 1181.3.) However, this requirement may be satisfied by electronically filing your documents via the Commission's e-filing system. Please see http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website. The written material will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting. This procedure will satisfy all the service requirements pursuant to section 1181.3 of the Commission's regulations.

If you would like to request an extension of time, please refer to section 1187.9(a) of the Commission's regulations.

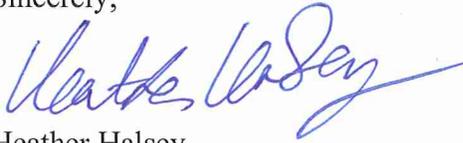
to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Messrs. Burhenn, Howard, and Lauffer, and Ms. Smythe
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Tentative Hearing Date

This Test Claim is tentatively set for hearing on **July 27, 2018**.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", with a long horizontal flourish extending to the right.

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 12, 2017, I served the:

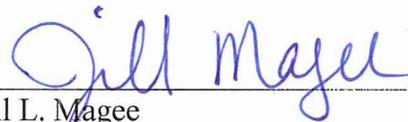
- **Notice of Complete Joint Test Claim, Removal from Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date issued September 12, 2017**
- **Joint Test Claim filed by County of San Bernardino, et al., on June 30, 2011 corrected on July 29, 2011, revised July 31, 2017**

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2010-0036, 10-TC-10*

County of San Bernardino, San Bernardino County Flood Control District,
Cities of Big Bear Lake, Chino, Chino Hills, Fontana, Highland,
Montclair, Ontario, and Rancho Cucamonga, 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 September 12, 2017 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/12/17

Claim Number: 10-TC-10

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0036

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City of Chino
City of Chino Hills
City of Fontana
City of Highland
City of Montclair
City of Ontario
City of Rancho Cucamonga
County of San Bernardino
San Bernardino 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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