



DEPARTMENT OF  
**FINANCE**

**RECEIVED**  
January 26, 2018  
**Commission on  
State Mandates**

EDMUND G. BROWN JR. ■ GOVERNOR

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January 26, 2018

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**California Regional Water Quality Control Board, Los Angeles Region,  
Order No. R4-2012-0175, 13-TC-01 and 13-TC-02**

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claims on the California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175. The claimants allege the test claim permits are reimbursable state mandates because the test claim permit requirements exceed federal law, were not included in the prior permits and/or impose a new program or higher level of service on local agency dischargers.

Finance defers to the State Water Resources Control Board and the California Regional Water Quality Control Board, San Diego Region, on the impact of the Supreme Court decision *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 on the federal law component of the state mandate determination. Finance also defers to the Boards on the assertion that the test claim activities impose a new program or higher level of service. Finance comments on the fee authority issue raised by the claimants.

Claimants argue they have no fee authority to cover the alleged mandated costs incurred for the claimed activities. Finance believes claimants do have stormwater fee authority undiminished by Propositions 218 or 26. Notably, Proposition 26 specifically excludes assessments and property-related fees imposed in accordance with Proposition 218 from the definition of taxes (Art. XIII C, § 1, subd. (e)(7)). Further, claimants have authority to impose property-related fees under their police power for alleged mandated permit activities whether or not it is politically feasible to impose such fees via voter approval as may be required by Proposition 218. Local governments can choose not to submit a fee to the voters and voters can indeed reject a proposed fee, but not with the effect of turning permit costs into state reimbursable mandates.

Senate Bill 231 (2017), effective January 1, 2018, defines "sewer" for purposes of Proposition 218 and its exception to voter approval for sewer, water and refuse collection fees. The definition specifically includes stormwater and confirms stormwater fees are not subject to the voter approval requirement, but rather the majority protest procedure, in Proposition 218.

In *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App.4th 794, college districts challenged the State Controller's mandate claiming instructions that automatically reduced reimbursement claims by the amount the districts are statutorily authorized to charge students for health fees,

regardless of whether the districts chose to charge the fees or not. The court held that “[to] the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. (*Clovis* at p. 812). The court reasoned that “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’” (*Ibid.*)

The same reasoning applies to claimants here. They can choose not to put a fee to the voters, or the voters can reject a fee, but not at the state’s expense. Similarly, applying the vote-exception for stormwater fees confirmed by SB 231, a majority of property owners can protest and defeat a stormwater fee, but not with the result of creating a state mandate. The application of Proposition 218 does not result in alleged mandate costs recoverable solely from tax proceeds. Sufficient fee authority exists, regardless of political feasibility. Under Government Code section 17556, subdivision (d), claimants have authority to impose fees sufficient to pay for permit activities and they are not eligible for mandate reimbursement.

If the Commission were to conclude the 13-TC-01 permit imposes reimbursable mandated costs, claimants identified potentially offsetting revenue, including “portions of a small grant for implementation of tree box low impact development Best Management Practices” that should reduce mandated costs and be identified by the Commission.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



ERIKA LI  
Program Budget Manager

Attachment A

DECLARATION OF STEVEN PAVLOV  
DEPARTMENT OF FINANCE  
CLAIM NOS. R4-2012-0175, 13-TC-01 and 13-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 26, 2018  
At Sacramento, CA

  
Steven Pavlov

Attachment B

DECLARATION OF CHRIS HILL  
DEPARTMENT OF FINANCE  
CLAIM NOS. R4-2012-0175, 13-TC-01 and 13-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

1/26/12  
At Sacramento, CA

Chris Hill  
Chris Hill

**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 January 29, 2018, I served the:

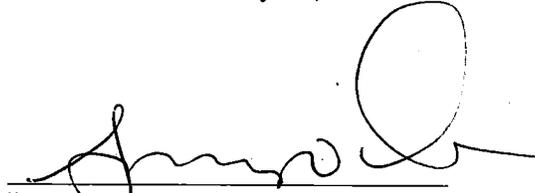
- **Department of Finance (Finance's) Comments on the Test Claim filed January 26, 2018**

*California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, 13-TC-01 and 13-TC-02*

Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, 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, County of Los Angeles, and Los Angeles County Flood Control District, 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 January 29, 2018 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 12/21/17

**Claim Number:** 13-TC-01 and 13-TC-02

**Matter:** California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175

**Claimants:** City of Agoura Hills  
City of Bellflower  
City of Beverly Hills  
City of Carson  
City of Cerritos  
City of Commerce  
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  
County of Los Angeles  
Los Angeles 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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