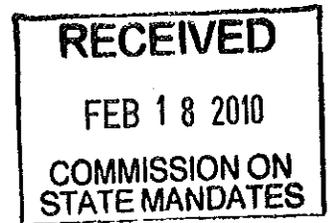


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February 12, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Request for Information; Municipal Storm Water and Urban Runoff Discharges 03-TC-04; 03-TC-20; 03-TC-21; Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001; Part 4, Section F.5C.3, County of Los Angeles; Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk, Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal Hill, Co-Claimants

Dear Ms. Higashi:

This office represents Co-Claimants Cities of Artesia, Azusa, Bellflower, Beverly Hills, Carson, Commerce, Covina, Downey, Monterey Park, Norwalk, Rancho Palos Verdes and Signal Hill with respect to the above-referenced test claims. We have reviewed a letter from Los Angeles Regional Water Quality Control Board Executive Officer Tracy Egoscue to you dated January 26, 2010, responding to a letter from you dated January 7, 2010, asking her, in part, to explain why the Cities of Carson and Downey were listed as "local agencies subject to the Los Angeles River trash TMDL."

In her letter, Ms. Egoscue states that "[g]eographically, both Carson and Downey are within the Los Angeles River Watershed" and that Carson and Downey have been identified in trash TMDL regulations "as subject to the Los Angeles River Watershed Trash TMDL."

In fact, only *portions* of the Cities of Carson and Downey are located within the Los Angeles River Watershed and thus subject to the trash TMDL for the Los Angeles River watershed. For example, all but a very small portion of the City of Carson is located within the Dominguez Channel Watershed, which is not subject to a trash TMDL. More than half of the City of Downey is located within the San Gabriel River and Los

Ms. Paula Higashi
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Cerritos Channel Watersheds, which also are not subject to a trash TMDL. Please also see our letter of November 13, 2009 addressing similar arguments made on behalf of the Los Angeles Regional Board.

As Ms. Egoscue's letter states, whether a city lies within a particular watershed is determined by geography and not permit attachments. If a city lies in part within a watershed without a trash TMDL, it still is entitled, under the Commission's decision, for a subvention of funds.

The proposed Parameters and Guidance submitted on behalf of our clients and by the County of Los Angeles make clear that the subvention of state funds is being sought on behalf of "all cities covered under the municipal storm water permit issued by the LARWQCB in Order No. 01-182, Permit No. CAS0040001 ("Permit"), to the extent that the same are not or were not subject to coverage under a trash TMDL."

The Commission should use this language as its standard for subvention, as this language addresses the circumstance where a city is partially in a watershed subject to a trash TMDL and partially in a watershed not subject to a trash TMDL. In such a circumstance, the city would be entitled to apply for subvention for those receptacles in the watershed not subject to a trash TMDL. The Commission should not use attachments to permit documents as the determinative factor as to whether a claimant is entitled to a subvention of funds, as those attachments do not address cities that are located in multiple watersheds.

Please call me at the number noted above if you have any questions regarding the matters discussed in this letter.

Very truly yours,



David W. Burhenn

cc: Service List

1
2 **PROOF OF SERVICE**

3 I am employed in Los Angeles County. I am over the age of 18 and not a party to this
4 action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

5 On February 12, 2010 I served the foregoing document, described as

6 Request for Information; Municipal Storm Water and Urban Runoff Discharges 03-TC-04; 03-TC-20; 03-TC-
7 21; Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001; Part 4,
8 Section F.5C.3, County of Los Angeles, Cities of Artesia, Azusa, Beverly Hills, Carson, Commerce, Norwalk,
9 Rancho Palos Verdes, Westlake Village, Vernon, Bellflower, Covina, Downey, Monterey Park, Signal
10 Hill, Co-Claimants

- 11 the original of the document
12 true copies of the document

13 in separate sealed envelopes addressed as follows:

14 See Attached Service List

15 **BY U.S. MAIL:** I sealed and placed such envelope for collection and mailing to be
16 deposited on the same day at Los Angeles, California. The envelopes were mailed with postage
17 thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and
18 processing corresponding for mailing. Under this practice, documents are deposited with the U.S.
19 Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at
20 Los Angeles, California in the ordinary course of business.

21 **BY FEDERAL EXPRESS:** I am familiar with the firm's practice of collecting and
22 processing correspondence for delivery via Federal Express. Under that practice, it would be picked
23 up by Federal Express on that same day at Los Angeles, California and delivered to the parties as
24 listed on this Proof of Service the following business morning.

25 **BY FACSIMILE:** I caused the above referenced document to be transmitted via facsimile
26 to the parties as listed on this Proof of Service.

27 **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the office
28 of the addressee(s).

STATE: I declare under penalty of perjury under the laws of the state of California that the
above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

Executed on February 12, 2010 at Los Angeles, California.

25
26
27
28

David W. Burhenn

Commission on State Mandates

Original List Date: 9/29/2003
Last Updated: 9/14/2009
List Print Date: 09/14/2009
Claim Number: 03-TC-04
Issue: Transit Trash Receptacles

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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