



December 2, 2016

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Water Quality Control Board  
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Mr. Thomas Howard  
State Water Resources  
Control Board  
P.O. Box 2815  
Sacramento, CA 95812

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

**Re: Request for Additional Evidence and Briefing**

*California Regional Water Quality Control Board, San Francisco Bay Region,  
Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d,  
C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and  
C.12.f,*

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

Dear Messrs. Wolfe and Howard,

Commission on State Mandates (Commission) staff is in the process of reviewing and analyzing the above-named consolidated test claims and requests additional briefing on one of the disputed issues raised by the parties. Article XIII B, section 6 of the California Constitution requires that the mandated activities be newly imposed on local government and constitute a “new program or higher level of service.”

Along with its comments on Test Claim 10-TC-05, the San Francisco Bay Regional Water Quality Control Board (Regional Board) filed the City of San Jose’s Urban Runoff Management Plan dated September 2004 and its subsequent annual work plans for fiscal years 2005-2006 to 2009-2010 (Attachments 68 to 73), which were incorporated by reference into Revised Order No. 01-124, in support of its position that the requirements contained therein are integral parts of the immediately preceding stormwater permit and, thus, provisions C.2.b, C.2.c, C.2.e, and C.2.f of the Test Claim Order No. R2-2009-0074 are not new and do not impose a new program or higher level of service (arguments rebutted by City of San Jose in rebuttal comments filed on September 15, 2011 <http://www.csm.ca.gov/matters/10-TC-05/doc16.pdf>). However, the Regional Board did not make the same arguments or file copies of Urban Runoff Management Plans and subsequent annual Work Plans for the other cities covered by Revised Order No. 01-024 (the Cities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, Santa Clara, Saratoga, or Sunnyvale) or for the non-Santa Clara County cities that are also required to comply with provisions C.2.b, C.2.c, C.2.e, and C.2.f of the test claim permit, Order No. R2-2009-0074. Thus it is unclear from the record whether the Regional Board is asserting the activities required by provisions C.2.b, C.2.c, C.2.e, and C.2.f are not new *only* as to the City of San Jose, or whether this argument also applies to all other municipality co-permittees.

As you are probably aware, a “test claim” is the first claim filed with the Commission alleging that a statute or executive order imposes costs mandated by the state. (Gov. Code § 17521.) Though multiple claimants may join together in pursuing a single test claim, the Commission

Mr. Howard and Mr. Wolfe

December 2, 2016

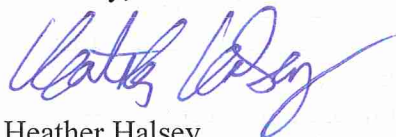
Page 2

will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies. (See Cal. Code Regs., tit. 2, §1183.1; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 872, fn. 10.) Thus, the test claim process “functions similarly to a class action and has been established to expeditiously resolve disputes affecting multiple agencies.” (Cal. Code Regs., tit. 2, §1181.2(s).)

Here, the “class” of claimants subject to Order R2-2009-0074 is all of the city, county and special district co-permittees (i.e. the 76 Alameda, Contra Costa, Santa Clara, San Mateo, Fairfield-Suisun and Vallejo permittees). Separate test claims for each county jurisdictional area were allowed to be filed by prior Commission staff because the prior permits were based on county jurisdiction rather than water basin, and it was alleged that those subject to different prior permits stood in different shoes from one another and were not similarly situated. Likewise, the City of San Jose alleged specific C.2 provisions of the permit applicable only to city co-permittees, which were not alleged by the County of Santa Clara in its test claim to impose a reimbursable state-mandated program, and thus the City stood in different shoes from the County with regard to those C.2 provisions only. Therefore, Commission staff allowed the filing of four separate test claims, which are now consolidated for hearing for all permittees.

Since all city co-permittees are subject to Order R2-2009-0074, please provide additional comments with respect to the entire class of claimants to clarify whether the provisions of the co-permittees’ urban runoff management plans and subsequent annual work plans constitute prior law against which the C.2 provisions of the R2-2009-0074 permit requirements must be measured and, if so, provide copies of these documents to the Commission not later than **January 3, 2017**. Pursuant to sections 1183.2(c) and 1187.5 of the Commission’s regulations, any representation of fact must be supported by documentary evidence and signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant’s personal knowledge, information, or belief.

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 December 2, 2016, I served the:

**Request for Additional Evidence and Briefing**

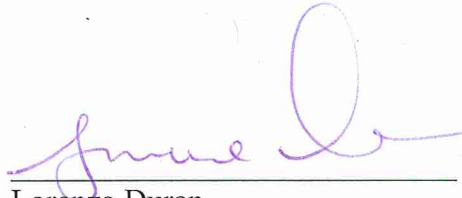
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C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and  
C.12.f,*

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, 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 December 2, 2016 at Sacramento, California.



---

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**Claimant:** Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara

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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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