



November 18, 2016

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Ms. Julia Woo
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Notice of Incomplete Joint Test Claim Filing
California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2009-0002, 10-TC-11
County of Orange, Orange County Flood Control District,
Cities of Dana Point, Laguna Hills, Laguna Niguel,
Lake Forest, Mission Viejo, and San Juan Capistrano, Co-Claimants

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Dear Messrs. Abbaszadeh, Casey, Channing, Curley, Dixon, Eggart, Fowler, Monette, Montevideo, Sandoval, Schlesinger, Silsby, Woodings, and Ms. Woo:

On June 30, 2011, the Commission on State Mandates (Commission) received the joint test claim filing submitted by the County of Orange, the Orange County Flood Control District, and the Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, and San Juan Capistrano (co-claimants). The Test Claim alleges reimbursable mandated activities arising from the NPDES permit No. CAS0108740, Order R9-2009-0002 (Order), adopted by the San Diego Regional Water Quality Control Board (regional board). The test claim permit became effective on the date of its adoption, December 16, 2009.

Although the filing was deemed complete on July 13, 2011, a review of the filing by legal staff has revealed that the filing is 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) does not meet the joint test claim requirements specified in Title 2, California Code of Regulations, section 1183.1(g); and (3) is missing a detailed description of increased costs and a statewide estimate of costs as required by Government Code section 17553.¹ However, it may be possible to cure this filing as described below.

To Be Considered Timely Filed

Government Code 17551(c) requires a local agency to file a test claim “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183 of the Commission regulations state that “[f]or the purposes of claiming based on the date of first incurred costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were *first incurred* by the test claimant.” (Emphasis added.)

The parties do not dispute the adoption date of the Order, as December 16, 2009.² Both the test claim caption and the Order list December 16, 2009 as the adoption date by the regional board. With regard to the effective date of the permit, the Order states:

This Order shall become effective on the date of its adoption provided the USEPA has no objection. If the USEPA objects it its issuance, this Order shall not become effective until such objection is withdrawn.

There is no evidence in the record that the USEPA objected to the issuance of the Order.

In this case, 12 months after the effective date of the Order is December 16, 2010; the Test Claim here was filed on June 30, 2011, beyond the statute of limitations in section 17551 and there is no assertion or evidence in the record of when costs were first incurred under the Order. Therefore, per the Order’s effective date, the Test Claim was filed beyond the statute of limitations.

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

² Test Claim 10-TC-11, page 5; SWRCB and Regional Board’s Comments on Test Claim, page 1.

It is settled principle that administrative agencies have only such powers as have been conferred upon them, expressly or by implication, by constitution or statute. An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. When an administrative agency acts in excess of the powers conferred upon it, its action is void.³ The Commission is a quasi-judicial administrative agency, whose authority is provided solely by statute. Pursuant to Government Code section 17551(b), the Commission's review of a test claim may be had "*only if*" the test claim is filed within the time limits specified in sections 17551(c), 17573, and 17574. Therefore, the Commission, by statute, does not have jurisdiction over this Test Claim because based on the evidence in the record, the claim was filed beyond the statute of limitations as a matter of law. Administrative orders are void when rendered without fundamental jurisdiction, or in excess of the agency's statutory powers, and may be collaterally attacked at any time.⁴

Joint Test Claim Requirements

A joint test claim may be filed by two or more claimants (or a co-claimant may be added to an existing claim upon joint request of the claimant and co-claimant) upon compliance with the requirements in Title 2, California Code of Regulations, section 1183.1(g):

Test claims may be prepared as a joint effort between two or more claimants and filed with the Commission if the claimants attest to all of the following in the test claim filing:

- (1) The claimants allege state-mandated costs result from the same statute or executive order;
- (2) The claimants agree on all issues of the test claim; and
- (3) The claimants have designated *one contact person* to act as the resource for information regarding the test claim.

For this filing to be filed as a *joint* test claim, all claimants must agree on all issues of the test claim and designate a single claimant representative, common to all joint claimants, in *Section 3. Claimant Representative Information* on the test claim form pursuant to section 1183.1(g)(3) of Commission regulations.

Here, each claimant has designated a different representative in *Section 3. Claimant Representative Information* on its test claim form rather than one contact person to represent them all.

³ *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *Graves v. Commission on Professional Competence* (1976) 63 Cal.App.3d 970, 976.

⁴ *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 677-679; *Aylward v. State Board etc. Examiners* (1948) 31 Cal.2d 833, 839; *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App.3d 219, 234; *City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400.

Who May File a Test Claim on Behalf of a Local Agency?

Pursuant to section 1183.1(a) of Commission regulations, only specified authorized local agency officials may file on behalf of a city, county, or special district.

For counties, only a “county auditor, auditor-controller, or director of finance who has assumed the duties of controller, may file on behalf of a county.” In this filing, though Mr. Shane Silsby, Director of Public Works (or anyone that the County wishes to designate) could be designated by the county auditor, auditor-controller, or director of finance who has assumed the duties of controller to act as the County’s sole representative on a matter (assuming that either this is not a joint filing or that he has been designated by all co-claimants to act as their representative for this matter), he may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may the Claimant Representative, Ms. Julia Woo, sign as the authorized signatory in *Section 8. Claim Certification* of the test claim form because neither is listed in section 1183.1(a)(1), nor is it clear that either has authority to legally bind the County. However, designated claimant representatives and anyone else who specifically requests to be on the mailing list for a matter are included on all service of written materials and may participate in the mandate determination process.

For cities, pursuant to section 1183.1(a)(2) of Commission regulations, only a “city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council, may file on behalf of a city.” The city manager, director of finance, or other officer with a delegation by ordinance or resolution from the city council may designate anyone they wish to act as the City’s sole representative on a matter (though in a joint filing all co-claimants must designate one and the same representative), only an official authorized in section 1183.1(a)(2) of the Commission’s regulations may be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, or act as the authorized signatory in *Section 8. Claim Certification* of the test claim form. Therefore, though Messrs. Abbaszadeh, Fowler, Schlesinger, or Woodings (or anyone that the City wishes to designate) could be designated by to act as the City’s sole representative on a matter, none of them may be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may they sign the *Section 8. Claim Certification* of the test claim form, nor may the Claimant Representative, Mr. Omar Sandoval, sign as the authorized signatory in *Section 8. Claim Certification* of the test claim form. Again, representatives and anyone who specifically requests to be on the mailing list for a matter are included on all service of written materials.

Further, *Section 8. Claim Certification* of the test claim form may be signed by a different person (i.e. another *authorized* local agency official specified section 1183.1(a) of Commission regulations) than is indicated in *Section 2. Claimant Information* so long as the declarant’s address, telephone number, and e-mail address are also provided. (Government Code 17553(b)(4)). Note that the designated representative may not sign here because this is also the form that provides for the official designation of the representative by the claimant and only the claimant may make such a designation.

There Are No Duplicate Claims Allowed, However All Affected (and Interested) Agencies May Participate in the Test Claim Process Whether or Not They Are Named Co-Claimants in a Joint Claim.

A “test claim” is the first claim filed with the Commission alleging that a particular legislative enactment or executive order imposes costs mandated by the state. (Gov. Code § 17521.) Though multiple claimants may join together in pursuing a joint test claim, the Commission will not hear duplicate claims, and Commission decisions apply statewide to similarly situated school districts and local agencies (or in this case to all co-permitees whether or not they are named co-claimants). (See Cal. Code Regs., tit. 2, § 1183.1; *San Diego Unified v. Commission on State Mandates*, page 872, fn. 10.) Thus, the test claim “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).)

If one agency files the first test claim by itself, then other similarly situated affected agencies (also known as interested parties) may participate in the process by submitting comments in writing on the test claim (which may include submitting evidence of its own costs or required activities under the permit) and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission. Opportunities to comment are provided at several junctures including: (1) upon completeness (to comment on the test claim filing); (2) upon the issuance of a draft proposed decision; and (3) at the hearing(s) on the matter. Interested parties may wish to include the submission of evidence of costs incurred and the addition of argument on the legal issues.

A Detailed Description of Costs Is Required.

Government Code section 17553 specifies that all test claim filings contain at least the following elements:

- (A) *A detailed description of the new activities and costs that arise from the mandate.*
- (B) *A detailed description of existing activities and costs that are modified by the mandate.*
- (C) *The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.*
- (D) *The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*
- (E) *A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.*

Under *Section 5. Written Narrative*, the claimants are directed to:

Include a statement that the actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), **and** include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.

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(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

For this filing to be complete, the detailed costs description set forth in Government Code section 17553, must be included in the narrative of the Test Claim.

Curing This Filing

To cure this filing, please provide all of the following:

1. Evidence of the date and amount of costs *first* incurred as a result of the alleged new activities required under the Order.
2. A revised test claim form from each co-claimant that:
 - A. Provides claimant information of an individual authorized to file on behalf of the agency under section 1183.1 of the Commission's regulations in *Section 2. Claimant Information*.
 - B. Designates in *Section 3. Claimant Representative Information* the same claimant representative as all the other claimants in this joint filing. (You may additionally request that an additional claimant contact be included on the mailing list, if desired.) If the co-claimants do not wish to file jointly and select one representative for all joint-claimants, please agree amongst yourselves on one agency to act as claimant and the remaining agencies may request to be on the mailing list and participate as interested parties on the claim.
 - C. Provides a signature and complete contact information of an individual authorized to file on behalf of the agency under section 1183.1 in *Section 8. Claim Certification*.
3. Revised written narratives and declarations that provide a detailed description of the costs that are modified by the alleged mandate including the *actual* increased costs incurred by each co-claimant during the fiscal year for which the joint test claim was filed as well as the actual or estimated annual costs that will be incurred by each co-claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed. In addition, please provide the statewide cost estimate (in this case the "statewide cost" is the cost for all of the local agency co-permittees, whether named or not, for the alleged new program or higher level of service imposed by the permit at issue) for increased costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the joint test claim was filed.

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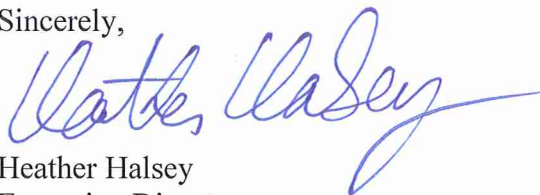
Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief.⁵

Retaining Your Original Filing Date

To retain the original filing date, **please refile *only* the following required elements** to cure this filing.⁶ (1) evidence of the date and amount of costs *first* incurred as a result of the alleged new activities required under the order; (2) revised test claim forms from each co-claimant; (3) and revised written narratives and declarations as specified above to supersede your initial filing with the Commission within 30 days of the date of this letter by **December 19, 2016**. If a complete test claim filing is not received within 30 calendar days from the date the incomplete test claim filing was returned, the executive director may disallow the original test claim filing date. (Cal. Code Regs., tit. 2, § 1183.1(f).) As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

The filing may be submitted electronically via the Commission's e-filing system pursuant to section 1181.3 of the Commission's regulations and will replace the specified elements of the original filing. Please see the Commission's website at http://www.csm.ca.gov/dropbox_procedures.php.

Sincerely,



Heather Halsey
Executive Director

⁵ Title 2, California Code of Regulations, section 1187.5.

⁶ Please do not refile the supporting documentation, which is nearly 2000 pages. Commission staff will replace the current test claim forms and written narratives with the revised ones and will append any additional supporting documentation filed as evidence of costs to the back of the supporting documentation currently on file,

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 November 18, 2016, I served the:

Notice of Incomplete Joint Test Claim Filing

California Regional Water Quality Control Board, San Diego Region,

Order No. R9-2009-0002, 10-TC-11

County of Orange, Orange County Flood Control District,

Cities of Dana Point, Laguna Hills, Laguna Niguel,

Lake Forest, Mission Viejo, and San Juan Capistrano, 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 November 18, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/18/16

Claim Number: 10-TC-11

Matter: California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002

Claimants: City of Dana Point
City of Laguna Hills
City of Laguna Niguel
City of Lake Forest
City of Mission Viejo
City of San Juan Capistrano
County of Orange
Orange 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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