



February 8, 2017

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

RE: Notice of Incomplete Joint Test Claim Filing

Santa Ana Region Water Permit – County of Riverside, 10-TC-07
County of Riverside, Riverside County Flood Control and Water Conservation District,
Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San
Jacinto, Co-Claimants

Dear Messrs. Biagioni, Burhenn, Carr, Emberton, Orr, Prathivadi, Uhley, Vogt, and Mss. Perez and Thompson:

On January 31, 2011, the Commission on State Mandates (Commission) received the joint test claim filing submitted by the County of Riverside, the Riverside County Flood Control and Water Conservation District, and the Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto (co-claimants). The Test Claim alleges reimbursable mandated activities arising from the NPDES permit No. CAS618033, Order R8-2010-0033 (Order), adopted by the Santa Ana Regional Water Quality Control Board (regional board). The test claim permit became effective on the date of its adoption, January 29, 2010.

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Commission on State Mandates

980 9th Street, Suite 300 Sacramento, CA 95814 | www.csm.ca.gov | tel (916) 323-3562 | email: csminfo@csm.ca.gov

Although the filing was deemed complete on February 16, 2011, an initial 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 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) 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 January 29, 2010.² Both the test claim caption and the Order list January 29, 2010 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 January 29, 2010.

In this case, 12 months after the effective date of the Order is January 29, 2011; the Test Claim here was filed on January 31, 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.

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

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-07, page 126; SWRCB and Regional Board’s Comments on Test Claim, page 1.

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.

rendered without fundamental jurisdiction, or in excess of the agency's statutory powers, and may be collaterally attacked at any time.⁴

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, Mr. Jay Orr, Assistant County Executive Officer may not 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 because this position is not listed in section 1183.1(a)(1), nor is it clear that this individual has authority to legally bind the County. However, anyone who specifically requests to be on the mailing list for a matter is 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." Therefore, 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. Thus, Messrs. Biagioni, Carr, Emberton, Prathivadi, Vogt, and Mss. Perez and Thompson may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may they act as the authorized signatory for the purposes of *Section 8. Claim Certification* of the test claim form because their positions are not listed in section 1183.1(a)2, nor is it clear that they have authority to legally bind the cities. Again, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials.

For special districts, pursuant to section 1183.1(a)(5) of Commission regulations, only a "general manager or other officer with authority delegated by the governing body by ordinance or resolution may file on behalf of a special district." Therefore, only an official authorized in section 1183.1(a)(5) 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. Thus, Mr. Jason Uhley may not be named as Claimant Contact in *Section 2. Claimant Information* on the test claim form, nor may he act as the authorized signatory for purposes of *Section 8. Claim Certification* of the test claim form because he is not the general manager, nor is it clear that he has authority to legally bind the Riverside County Flood Control and Water Conservation District. Again, anyone who specifically requests to be on the mailing list for a matter will be included on all service of written materials.

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.

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.

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.
- (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

1. To cure this filing, please provide all of the following: 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. Provides a signature and complete contact information of an individual authorized to file on behalf of the agency pursuant to section 1183.1 of the Commission's regulations in *Section 8. Claim Certification*.

To file a *joint* test claim, all claimants must indicate that they 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.⁵

Claimant Representative Information on the test claim form pursuant to section 1183.1(g)(3) of Commission regulations.⁵

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.

Please note that section 17553(b)(2) of the Government Code requires the following with regard to the written narrative:

The written narrative shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information or belief, and signed by persons who are authorized and competent to do so as follows:

- (A) Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- (B) Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- (C) Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

⁵ It has been noted that all of the test claim forms filed for this matter have designated a single representative as required in *Section 3: Claimant Representative Information*, in this case Mr. David Burhenn, to represent the joint claimants. The revised forms should also include a single claimant representative.

Messrs. Biagioni, Burhenn, Carr, Emberton, Orr, Prathivadi, Uhley, Vogt, and Mss. Perez and Thompson

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(D) If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Section 17574.

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 **March 10, 2017**. 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

⁶ Please do not refile the supporting documentation, which is nearly 500 pages. Commission staff will replace the current test claim forms, written narratives, and declarations 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 February 8, 2017, I served the:

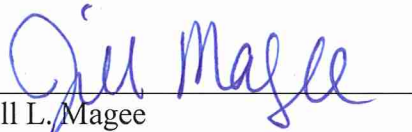
Notice of Incomplete Joint Test Claim Filing

Santa Ana Region Water Permit – County of Riverside, 10-TC-07

County of Riverside, Riverside County Flood Control and Water Conservation District,
Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San
Jacinto, 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 February 8, 2017 at Sacramento, California.



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

Mailing List

Last Updated: 2/3/17

Claim Number: 10-TC-07

Matter: Santa Ana Regional Water Permit - Riverside County

Claimants: City of Beaumont
City of Corona
City of Hemet
City of Lake Elsinore
City of Moreno Valley
City of Perris
City of San Jacinto
County of Riverside
Riverside County Flood Control and Water Conservation 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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