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**RECEIVED**  
April 16, 2018  
**Commission on  
State Mandates**

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April 13, 2018

Via Drop Box

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

Re: Concerns of Orange County Test Claimants Regarding Continuance of Hearings on No. 09-TC-03, California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030 and No. 10-TC-11, California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002

Dear Ms. Halsey:

I am writing as Claimant Representative for claimants in the two above-referenced Joint Test Claims, Nos. 09-TC-03 and 10-TC-11 ("Claimants"), to set forth Claimants' concerns over the series of continuances of the hearing dates for these claims, which has delayed consideration of these test claims for over a year.

Following issuance of the California Supreme Court's decision in *Dept. of Finance v. Commission on State Mandates* in August 2016, Commission staff requested Claimants to submit various comment documents and to respond to Notices of Incomplete Test Claim ("Notice"). Following submission of these documents and responses, the record on the test claims closed on December 19, 2016 and January 6, 2017, respectively. Hearings on these test claims were set for various dates in 2017, but these were continued. On December 15, 2017, the hearing on No. 09-TC-03 was set for March 23, 2018 and the hearing on No. 10-TC-11 was set for May 25, 2018. These hearing dates passed with no Proposed Decision having been issued, and almost no advance notice to Claimants that the hearings would not proceed.

On March 26, Claimants learned, from a review of the Commission's website, that the hearings on both test claims had been continued not to the next available hearing date,

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July 27, but rather to September 28. Respectfully, the continued delays in the hearings on these test claims have served to adversely affect the interests of Claimants, who have worked diligently to meet the deadlines set by Commission staff.

In particular we note that in No. 09-TC-03, a test claim which was originally deemed complete in 2010 and which has been fully briefed since 2011, Claimants timely responded on October 21, 2016 to staff's request for new briefing on the impact of *Dept. of Finance* and then responded to a Notice by the requested due date of December 19, 2016. Similarly, in No. 10-TC-11, a claim which was originally deemed complete in 2011, Claimants filed both a response to a Notice (issued the same day as the Notice in No. 09-TC-03) and Rebuttal Comments on January 6, 2017, after Claimants' request for an extension until January 12, 2017 was denied on the basis that a further continuance would require moving a May 24, 2017 hearing date.

Claimants understand that the Commission's backlog on stormwater permit test claims mounted as those test claims awaited the resolution of legal challenges to the Commission's decision in the original stormwater permit test claim involving the Los Angeles County permit. This is explained in the Commission's *2017 Report to the Director of Finance on Workload Levels and Backlog Reduction Plan*, dated September 11, 2017. We note that in the Report, the Commission indicated that it is committed to reducing that backlog, with special emphasis on test claims and other proceedings with a statutory deadline.

In light of these facts, Claimants respectfully request that the hearings on Test Claim Nos. 09-TC-03 and 10-TC-11 be held as scheduled on September 28, 2018 and not be further delayed. Claimants also respectfully request that the Draft Proposed Decisions on these test claims be issued reasonably far in advance of the hearing dates so that if either Claimants or the State agencies request an extension to the comment deadline, such extension would not affect staff's ability to finish a Proposed Decision in time for the Commission's consideration at the September 28 hearing.

Finally, because these test claims involve input by a number of local agencies, we would also request that to the extent feasible, staff promptly advise all parties as to when they might expect release of Draft Proposed Decisions. This will enable parties, their legal counsel, and staff to ensure that personnel are available to participate in the comment process, especially in view of the likely summer release of the Decisions.

BURHENN & GEST LLP

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Thank you very much for your consideration of these issues. If you have any questions regarding these matters, please do not hesitate to contact me at the number and e-mail address set forth above.

I declare under penalty of perjury that the foregoing, signed on April 13, 2018, is true and correct to the best of my personal knowledge, information, or belief.

A handwritten signature in blue ink, appearing to read "David W. Burhenn", with a long horizontal flourish extending to the right.

David W. Burhenn

Claimant Representative

Address, phone and e-mail set forth above

cc: Claimants

**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 April 19, 2018, I served the:

- **Response to Claimants' Inquiry Regarding Hearing Date and Notice of Tentative Hearing Date issued April 19, 2018**
- **Claimants' Inquiry Regarding Hearing Date filed April 16, 2018**

*California Regional Water Quality Control Board, Santa Ana Region,  
Order No. R8-2009-0030, 09-TC-03*

County of Orange, Orange County Flood Control District, Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants

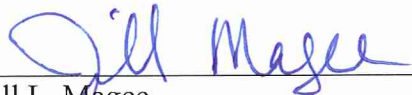
AND

*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, 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 April 19, 2018 at Sacramento, California.



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City of Buena Park  
City of Costa Mesa  
City of Cypress  
City of Fountain Valley  
City of Fullerton  
City of Huntington Beach  
City of Irvine  
City of Lake Forest  
City of Newport Beach  
City of Placentia  
City of Seal Beach  
City of Villa Park  
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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**Last Updated:** 4/18/18

**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

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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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