



April 19, 2018

Mr. David Burhenn
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And Parties, Interested Parties, and Interested Persons (See Mailing Lists)

**RE: Response to Claimants' Inquiry Regarding Hearing Date and
Notice of Tentative Hearing Date**

*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

Dear Mr. Burhenn:

On April 16, 2018, the Commission on State Mandates (Commission) received your letter regarding the claimants' perception that the hearing date for the two above-named Test Claims has been set and has been subsequently continued.

Specifically, you suggest that based on the tentative hearing date originally provided in the Notice of Complete Joint Test Claim Filing and Renaming of Matter issued December 23, 2016,¹ the Notice of Complete Joint Test Claim Filing issued January 17, 2017, and on your recent review of the Commission's pending caseload for test claims posted on the Commission's website,² that the hearing dates for both of the above-named Test Claims were not tentatively set, as these documents clearly indicate, but were in fact actually set for hearing even though no draft proposed decisions have been issued for either matter. Under the Commission's regulations, a matter is set for hearing when the draft proposed decision is issued. In addition, you request that

¹ Test Claim, *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, 09-TC-03*, Notice of Complete Joint Test Claim Filing and Renaming of Matter issued December 23, 2016, <https://www.csm.ca.gov/matters/documents/CompleteLetter.pdf> and Test Claim, *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, 10-TC-11*, Notice of Complete Joint Test Claim Filing issued January 17, 2017, <https://www.csm.ca.gov/matters/10-TC-11/doc107.pdf>, both accessed on April 17, 2018.

² Commission on State Mandates' Pending Caseload for Test Claims, <https://www.csm.ca.gov/documents/TestClaims032318.pdf>, updated March 23, 2018, accessed April 17, 2018.

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the draft proposed decisions 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. Finally, you request that Commission staff promptly advise all parties as to when they might expect release of the Draft Proposed Decisions in order to 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 Draft Proposed Decisions.

Section 1183.6(b) of the Commission's regulations regarding test claims provides that at least eight weeks before the hearing, or at a time required by the executive director or stipulated to by the parties, Commission staff shall prepare a draft proposed decision and distribute it to the parties, interested parties, and those on the mailing list described in section 1181.3 of these regulations, and shall post it on the Commission's website.

In addition, section 1187.1(b) of the Commission's regulations provides that a matter is set for hearing when Commission staff issues its draft proposed decision. A written notice of the date, time, and place of hearing shall be provided to everyone on the mailing list as described in section 1181.4 of these regulations and shall be posted on the Commission's web site.

Furthermore, section 1187.9 provides for requests by parties for extensions of time to comment and for postponements of the hearing. As the Commission's regulations clearly indicate, please expect the draft proposed decisions on the above-named Test Claims to be issued to the mailing list no later than eight weeks prior to the hearing. Upon issuance of the draft proposed decision, a matter is officially set for hearing per sections 1183.6(b) and 1187.1(b) of the Commission's regulations. In the event that an extension of time, postponement of hearing, or continuance of a hearing is needed, please review the Commission's regulations in section 1187.9 (a) and (b) and (c) prior to filing your request to ensure that good cause is provided, as appropriate.

Please note that the pending caseload documents posted on the Commission's website are to be used for informational purposes only and, in the interests of information sharing as an added service to you, provide notice of the claims currently pending and an estimate of the time a matter may be set for hearing. There is no requirement for the Commission to prepare or post such information. Historically, no tentative dates were noticed and then, later, tentative dates were only listed for those matters in active review by Commission attorneys. Instead, the first notice the parties had of a potential hearing date was when a draft proposed decision was issued, which set the matter for hearing. The pending caseload document on the Commission's website has since been added to assist the parties in workload planning, but as you have seen, the estimates of time are subject to change. The pending caseload documents are generally updated following each Commission hearing and more frequently as required in response to changes in staffing and workload. It is expected that you will review the posted pending caseload at your convenience for the most current information on your matters which have yet to be set for hearing.

Pending caseload documents are subject to change for any number of reasons including but not limited to:

- The Number and Level Of Positions: Though the Commission currently has sufficient positions to address current workload, the Commission has had a recent vacancy in half of its attorney positions – the attorneys formerly in those positions were working on

stormwater claims, including one of the claims you are inquiring about, and that work will now need to be largely re-done;

- **Staff Development Purposes:** New attorneys who are learning the mandates process and attorneys who have been working on difficult and complex claims and need a break in order to prevent burnout and attrition are assigned less complex matters which may be heard before earlier filed, but more complex matters from time to time. Note that the records on stormwater test claims are on average 10-20 times the size of a typical test claim and raise far more complex issues of fact and law. The specific claims you have inquired about currently have records of approximately 25,000 and 55,100 pages respectively, and every issue is disputed by the parties. As a result one can expect that the stormwater test claims will take far longer to analyze; and,
- **Delays Caused By Litigation And Requests For Extensions Or Postponements:** Commission decisions are sometimes litigated and this can result in a delay of several years. As you are no doubt aware, two stormwater lawsuits relating to prior Commission decisions are currently pending in the courts, which will impact the analysis of other pending stormwater test claims. Additionally, the Commission has the authority under Government Code section 17529 to appear and be represented in court on any complaint involving the mandates process or an act or order of the Commission. At this time, the Commission attorneys are busy with litigation and, at the same time, are working on test claims and other Commission matters. Likewise, the parties and interested parties have requested numerous extensions of time to comment on and to cure filings on the stormwater test claims. The handling of these requests, correspondence, and other administrative issues, also takes away staff time from the processing of matters before the Commission including the test claims at issue here.

Please note that the potential periods of reimbursement for Test Claims *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, 09-TC-03*, and *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, 10-TC-11* were established based on the test claim filing dates pursuant to Government Code section 17557(e). Thus, the time to process these Test Claims does not affect claimants' potential period of reimbursement if the claims are approved by the Commission or prejudice the parties.

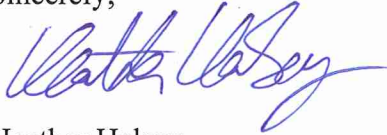
Tentative Hearing Date

Commission staff is prioritizing these test claims, and is tentatively setting 10-TC-11 for hearing on **September 28, 2018**, and tentatively setting 09-TC-03 for hearing on **November 30, 2018**. The Pending Caseload page of the Commission's website will be updated to reflect these tentative dates. These dates are not promised for either of these matters, but Commission staff is making every effort to issue draft proposed decisions in time for these tentative hearing dates. For your workload planning purposes, a draft proposed decision issued for the September hearing would be issued in July 2018, and a draft proposed decision issued for the November hearing would be issued in September 2018.

Mr. Burhenn
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Please note that Commission staff is cognizant of the fact that these filings have been cured and complete for over a year and is working to have them and the other pending stormwater claims issued for hearing as soon as possible.

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 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

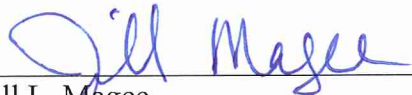
AND

*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.



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

Mailing List

Last Updated: 4/18/18

Claim Number: 09-TC-03

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

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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

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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