



RECEIVED  
October 11, 2017  
Commission on  
State Mandates

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 11, 2017

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**California Regional Water Quality Control Board, Los Angeles Region,  
Order No. R4-2010-0108, 11-TC-01**

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim on the California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108. The claimants allege the test claim permit is a reimbursable state mandate because the test claim permit requirements exceed federal law, were not included in the prior permit and, therefore, impose a new program or higher level of service on local agency dischargers.

Finance defers to the State Water Resources Control Board and the California Regional Water Quality Control Board, Los Angeles Region, on the impact of the Supreme Court decision *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 on the federal law component of the state mandate determination. Finance also defers to the Boards on the assertion that the test claim activities impose a new program or higher level of service. Finance comments primarily on the adequacy of fee authority issue raised by the claimants.

Claimants argue they have no fee authority or revenue source other than their general fund to fully cover the alleged mandated costs incurred for the claimed activities. Finance believes claimants do have stormwater fee authority undiminished by Propositions 218 or 26. Notably, Proposition 26 specifically excludes assessments and property-related fees imposed in accordance with Proposition 218 from the definition of taxes (Art. XIII C, § 1, subd. (e)(7)). Further, claimants have authority to impose property-related fees under their police power for alleged mandated permit activities whether or not it is politically feasible to impose such fees via voter approval as may be required by Proposition 218. Local governments can choose not to submit a fee to the voters and voters can indeed reject a proposed fee, but not with the effect of turning permit costs into state reimbursable mandates.

In *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App.4th 794, college districts challenged the State Controller's mandate claiming instructions that automatically reduced reimbursement claims by the amount the districts are statutorily authorized to charge students for health fees, regardless of whether the districts chose to charge the fees or not. The court held that "[to] the extent a local agency or school district 'has the authority' to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost. (*Clovis* at p. 812). The court reasoned that "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'" (*Ibid.*)

The same reasoning applies to claimants here. They can choose not to put a fee to the voters, or the voters can reject a fee, but not at the state's expense. The application of Proposition 218 does not result in alleged mandate costs recoverable solely from tax proceeds. Sufficient fee authority exists, regardless of political feasibility. Under Government Code section 17556, subdivision (d), claimants have authority to impose fees sufficient to pay for permit activities and they are not eligible for mandate reimbursement.

If the Commission were to conclude the permit imposes reimbursable mandated costs, there is potentially offsetting revenue which includes funding from the Benefit Assessment Program, and possibly from other revenue sources, that should reduce those costs and be identified by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justyn Howard', written in a cursive style.

JUSTYN HOWARD  
Program Budget Manager

**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 October 12, 2017, I served the:

- **Department of Finance (Finance) Comments on the Test Claim filed October 11, 2017**

*California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, 11-TC-01.*

County of Ventura and Ventura County Watershed Protection District, 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 October 12, 2017 at Sacramento, California.



---

Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/21/17

**Claim Number:** 11-TC-01

**Matter:** California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

**Claimants:** County of Ventura  
Ventura County Watershed Protection 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.)

**Arne Anselm**, *Ventura County Watershed Protection District*  
800 S Victoria Ave, Ventura, CA 93009  
Phone: (805) 662-6882  
arne.anselm@ventura.org

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Harmeet Barkschat**, *Mandate Resource Services, LLC*  
5325 Elkhorn Blvd. #307, Sacramento, CA 95842  
Phone: (916) 727-1350  
harmeet@calsdrc.com

**Lacey Baysinger**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Shanda Beltran**, *General Counsel, Building Industry Legal Defense Foundation*  
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614  
Phone: (949) 553-9500  
sbeltran@biasc.org

**Cindy Black**, *City Clerk, City of St. Helena*  
1480 Main Street, St. Helena, CA 94574  
Phone: (707) 968-2742  
cityclerk@cityofstheleena.org

**Allan Burdick,**

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

**J. Bradley Burgess, *MGT of America***

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

**Jeffrey Burgh, Auditor Controller, *County of Ventura***

Ventura County Watershet Protection District, 800 S. Victoria Avenue, 800 S. Victoria Avenue,  
Ventura, CA 93009-1540

Phone: (805) 654-3151

jeff.burgh@ventura.org

**Gwendolyn Carlos, *State Controller's Office***

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

**Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities***

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8222

Dcarrigg@cacities.org

**Annette Chinn, *Cost Recovery Systems, Inc.***

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinners@aol.com

**Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office***

925 L Street, Sacramento, CA 95814

Phone: (916) 319-8326

Carolyn.Chu@lao.ca.gov

**Michael Coleman, *Coleman Advisory Services***

2217 Isle Royale Lane, Davis, CA 95616

Phone: (530) 758-3952

coleman@muni1.com

**Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office***

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816

Phone: (916) 324-4112

Adagan@sco.ca.gov

**Marieta Delfin, *State Controller's Office***

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

**Theresa Dunham, *Somach Simmons & Dunn*****Claimant Representative**

500 Capitol Mall, Suite 1000, Sacramento, CA 95814

Phone: (916) 446-7979

tdunham@somachlaw.com

**Donna Ferebee**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
donna.ferebee@dof.ca.gov

**Jennifer Fordyce**, *State Water Resources Control Board*  
1001 I Street, 22nd floor, Sacramento, CA 95814  
Phone: (916) 324-6682  
jfordyce@waterboards.ca.gov

**Sophie Froelich**, Attorney III, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95812  
Phone: (916) 319-8557  
Sophie.Froelich@waterboards.ca.gov

**Susan Geanacou**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
susan.geanacou@dof.ca.gov

**Dillon Gibbons**, Legislative Representative, *California Special Districts Association*  
1112 I Street Bridge, Suite 200, Sacramento, CA 95814  
Phone: (916) 442-7887  
dillong@csda.net

**Catherine George Hagan**, Senior Staff Counsel, *State Water Resources Control Board*  
c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego,  
CA 92108  
Phone: (619) 521-3012  
catherine.hagan@waterboards.ca.gov

**Heather Halsey**, Executive Director, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
heather.halsey@csm.ca.gov

**Sunny Han**, Project Manager, *City of Huntington Beach*  
2000 Main Street, Huntington Beach, CA 92648  
Phone: (714) 536-5907  
Sunny.han@surfcity-hb.org

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Chris.Hill@dof.ca.gov

**Justyn Howard**, Program Budget Manager, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-1546  
justyn.howard@dof.ca.gov

**Mark Ibele**, *Senate Budget & Fiscal Review Committee*  
California State Senate, State Capitol Room 5019, Sacramento, CA 95814  
Phone: (916) 651-4103  
Mark.Ibele@sen.ca.gov

**Edward Jewik**, *County of Los Angeles*  
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564  
ejewik@auditor.lacounty.gov

**Dorothy Johnson**, Legislative Representative, *California State Association of Counties*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
djohnson@counties.org

**Jill Kanemasu**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-9891  
jkanemasu@sco.ca.gov

**Anita Kerezsi**, *AK & Company*  
3531 Kersey Lane, Sacramento, CA 95864  
Phone: (916) 972-1666  
akcompany@um.att.com

**Michael Lauffer**, Acting Executive Director and Chief Counsel, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828  
Phone: (916) 341-5183  
mlauffer@waterboards.ca.gov

**Hortensia Mato**, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3000  
hmato@newportbeachca.gov

**Frances McChesney**, *State Water Resources Control Board*  
1001 I Street, 22nd floor, Sacramento, CA 95814  
Phone: (916) 341-5174  
fmcchesney@waterboards.ca.gov

**Michelle Mendoza**, *MAXIMUS*  
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403  
Phone: (949) 440-0845  
michellemendoza@maximus.com

**Meredith Miller**, Director of SB90 Services, *MAXIMUS*  
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670  
Phone: (972) 490-9990  
meredithmiller@maximus.com

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
gneill@counties.org

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Adriana Nunez**, Staff Counsel, *State Water Resources Control Board*  
P.O. Box 100, Sacramento, CA 95812

Phone: (916) 322-3313  
Adriana.nunez@waterboards.ca.gov

**Lori Okun**, Assistant Chief Counsel, *State Water Resources Control Board*  
Regional Water Board Legal Services, 1001 I Street, Sacramento, CA 95814  
Phone: (916) 341-5165  
Lori.Okun@waterboards.ca.gov

**Arthur Palkowitz**, *Artiano Shinoff*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@as7law.com

**Steven Pavlov**, Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Steven.Pavlov@dof.ca.gov

**Jai Prasad**, *County of San Bernardino*  
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018  
Phone: (909) 386-8854  
jai.prasad@atc.sbcounty.gov

**Jeff Pratt**, *County of Ventura*  
800 S. Victoria Avenue, Ventura, CA 93009-1600  
Phone: (805) 654-3952  
jeff.pratt@ventura.org

**Renee Purdy**, *Los Angeles Regional Water Quality Control Board*  
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343  
Phone: (213) 576-6686  
rpurdy@waterboards.ca.gov

**Mark Rewolinski**, *MAXIMUS*  
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236  
Phone: (949) 440-0845  
markrewolinski@maximus.com

**David Rice**, *State Water Resources Control Board*  
1001 I Street, 22nd Floor, Sacramento, CA 95814  
Phone: (916) 341-5161  
davidrice@waterboards.ca.gov

**Ivar Ridgeway**, *Los Angeles Regional Water Quality Control Board*  
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343  
Phone: (213) 576-6686  
iridgeway@waterboards.ca.gov

**Nick Romo**, Policy Analyst, *League of California Cities*  
1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8254  
nromo@cacities.org

**Camille Shelton**, Chief Legal Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Carla Shelton**, *Commission on State Mandates*



980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 327-6490  
carla.shelton@csm.ca.gov

**Glenn Shephard**, Director, *Ventura County Watershed Protection District*  
800 S Victoria Ave, Ventura, CA 93009  
Phone: (805) 662-6882  
glenn.shephard@ventura.org

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-5849  
jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
DSpeciale@sco.ca.gov

**Tracy Sullivan**, Legislative Analyst, *California State Association of Counties (CSAC)*  
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 650-8124  
tsullivan@counties.org

**Derk Symons**, Staff Finance Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Derk.Symons@dof.ca.gov

**Jolene Tollenaar**, *MGT of America*  
2251 Harvard Street, Suite 134, Sacramento, CA 95815  
Phone: (916) 243-8913  
jolenetollenaar@gmail.com

**Evelyn Tseng**, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3127  
etseng@newportbeachca.gov

**Samuel Unger**, *Los Angeles Regional Water Quality Control Board*  
320 West 4th Street, Suite 200, Los Angeles, CA 90013-2343  
Phone: (213) 576-6605  
sunger@waterboards.ca.gov

**Renee Wellhouse**, *David Wellhouse & Associates, Inc.*  
3609 Bradshaw Road, H-382, Sacramento, CA 95927  
Phone: (916) 797-4883  
dwa-renee@surewest.net

**Jennifer Whiting**, Assistant Legislative Director, *League of California Cities*  
1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8249  
jwhiting@cacities.org

**Patrick Whitnell**, General Counsel, *League of California Cities*  
1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8281  
pwhitnell@cacities.org

**Hasmik Yaghobyan**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov