



July 28, 2017

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

RE: Request for Clarification of Pleading and Evidence of the Date of First Incurring Costs

San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001, 15-TC-02 County of Orange, Orange County Flood Control District, and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, and San Juan Capistrano, Claimants

Dear Mr. Burhenn:

On September 12, 2016, Commission staff issued the Notice of Complete Joint Test Claim Filing on the above-named matter based upon the effective date of Order No. R9-2015-0100, adopted on November 18, 2015, effective on January 7, 2016 which is within 12 months of the filing date of this Test Claim on June 30, 2016. However, looking more closely at this filing, it is unclear whether you also intended to plead Order No. R9-2013-0001 as amended by Order No. R9-2015-0001, effective on April 1, 2015 which is not within 12 months of the filing date of this Test Claim. Your filing specifies:

Joint Test Claim of the County of Orange et al. Concerning California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001, as amended by Order No. R9-2015-0001, as amended by Order No. R9-2015-0100.

This is the title of the R9-2015-0100 order, but it could also be interpreted as a list of orders. Therefore, clarification is necessary.

All Test Claims Must Be *Timely* Filed.

Government Code section 17551(c), states: “Local agency and school district test claims shall be filed 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.”

In addition, 1183.1(c) of the Commission’s regulations, states:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of *first* incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 or the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant. (Emphasis added.)

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Order R9-2015-0001 became effective on April 1, 2015 and Order R9-2015-0100 became effective on January 7, 2016.¹

Both the narrative and declarations specify that costs were first incurred during the fiscal year that ended on June 30, 2015, and includes costs for fiscal years 2014-15, 2015-16, and estimates for fiscal year 2016-17,² but neither specify *the date* that the test claimant *first* incurred increased costs as a result of the new activities and modified existing activities alleged to be mandated by this Permit within 12 months of the filing date. The Commission must support its finding on jurisdiction, based on *first* incurring increased costs, with evidence of the date that costs were incurred the record.

Request for Clarification of Pleading

Please specify if you only intended to plead R9-2015-0100, effective January 7, 2016, in which case you need to nothing further. However, if you intended to plead R9-2015-0001, effective April 1, 2015, evidence of the date of *first incurring* costs under that permit must be filed for the Commission to exercise jurisdiction over that Order.

The Narrative and Any Allegations of Fact Must Be Supported with Evidence in the Record.

All written representations of fact must be signed under penalty of perjury by a person competent to do so and must be based on the declarant's personal knowledge, information, or belief pursuant to section 1187.5 of the Commission's regulations.

Government Code section 17559(b) provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record. This requires that each finding of fact that the Commission makes (including whether there are costs mandated by the state, which is a mixed issue of law and fact) must meet the *Topanga* standard.³ In *Topanga* the court explained:

Section 1094.5 clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision. Subdivision (b) of Code of Civil Procedure section 1094.5 prescribes that when petitioned for a

¹ California Regional Water Quality Control Board, San Diego Region Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100, NPDES No. CAS109266.

² *San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001*, 15-TC-02, page 48 (“The Joint Test Claimants first incurred costs to implement the Regional Permit during the fiscal year that ended on June 30, 2015. This Narrative Statement includes fiscal year costs for FY 2014-2015, 2015-2016 and estimates for 2016-17.” (Narrative)); page 118 (“The County first incurred costs to comply with the Regional Permit and its new and expanding mandates during fiscal year (“FY”) 2014-2015.” (Declaration of Khalid Bazmi)); and page 120 (“However, I am informed and believe and therefore state that efforts required to address such standards have resulted in a cost sharing assessment to the County of \$26,304 in FY 2014-2015, \$135,090 in FY 2015-2016 and an estimated assessment during FY 2016-17 of \$196, 368.” (Declaration of Khalid Bazmi)).

³ *Topanga Association for a Scenic Community v. County Of Los Angeles* (1974) 11 Cal.3d 506.

writ of mandamus, a court's inquiry should extend, among other issues, to whether 'there was any prejudicial abuse of discretion.' Subdivision (b) then defines "abuse of discretion" to include instances in which the administrative order or decision 'is not supported by the findings, or the findings are not supported by the evidence.' (Emphasis added.) Subdivision (c) declares that 'in all . . . cases' (emphasis added) other than those in which the reviewing court is authorized by law to judge the evidence independently, 'abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.' . . .

Please provide a response, including evidence to support any assertions of fact, as soon as possible but not later than **August 28, 2017**.

Filing Written Materials

All written representations of fact made to the Commission are required to be supported by documentary or testimonial evidence submitted under penalty of perjury. (Cal. Code Regs., tit. 2, 1187.5.)

The Commission's regulations require that written materials filed with the Commission be simultaneously served on all parties, interested parties, and interested persons on the mailing list, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, 1181.3.) However, this requirement may be satisfied by electronically filing your documents via the Commission's e-filing system. Please see http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website. The written material will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting. This procedure will satisfy all the service requirements pursuant to section 1181.3 of the Commission's regulations.

If you would like to request an extension of time, please refer to section 1187.9(a) of the Commission's regulations.

Tentative Hearing Date

In addition to other matters pending before the Commission, this matter's tentative hearing date has been updated. This matter is now tentatively set for hearing on **December 7, 2018**. The Draft Proposed Decision will issue approximately eight weeks prior to the hearing.

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 July 28, 2017, I served the:

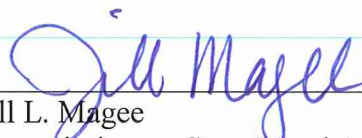
- **Request for Clarification of Pleading and Evidence of the Date of First Incurring Costs**

San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001, 15-TC-02

County of Orange, Orange County Flood Control District, and the Cities of Aliso Viejo, Dana Point, Laguna Beach, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, 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 July 28, 2017 at Sacramento, California.



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

Mailing List

Last Updated: 7/11/17

Claim Number: 15-TC-02

Matter: San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001

Claimants: City of Aliso Viejo
City of Dana Point
City of Laguna Beach
City of Laguna Hills
City of Laguna Niguel
City of Lake Forest
City of Mission Viejo
City of Rancho Santa Margarita
City of San Clemente
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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