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October 9, 2017

VIA DROP BOX

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

Re: *San Diego Region Order No. R9-2015-0100 and Order No. R9-2015-0001, 15-TC-02, Request for Clarification of Corrected Second Notice of Incomplete Joint Test Claim*

Dear Ms. Halsey:

I am writing this letter on behalf of the County of Orange, the 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 ("Joint Test Claimants") to respond to your "Corrected Second Notice of Incomplete Joint Test Claim" dated October 5, 2017 ("Corrected Second Notice"). I am the designated Claimant Representative for all Joint Test Claimants.

The Joint Test Claimants have significant concerns regarding various legal and factual issues raised in the Corrected Second Notice. We will be addressing those concerns separately. The purpose of this letter is to seek clarification of the directives contained in the Corrected Second Notice, and in particular the "Retaining Your Original Filing Date" paragraph on page 6.

As you know, the paragraph in question requires that "[t]o retain the original filing date," the "following required elements" are required to be "cured" and re-filed by no later than November 6, 2017:

(1) a revised written narrative specifying the dates that costs were first incurred under Order No. R9-2015-0001 and declarations or other evidence to support a finding of the date of first incurring costs under that order;

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(2) a copy of Order No. R9-2015-0001; and

(3) *either revised declarations or other evidence to support a finding of costs for each activity and existing modified activity alleged to be mandated by the state.*
(Emphasis added).


The third directive is contained in the same paragraph as the first two (and thus on its face is subject to the November 6, 2017 deadline). However, unlike the first two directives, the third directive does not legally require “cure” by the stated deadline because this directive is characterized on page 6 as optional and because it is not required for a determination that a test claim is complete. The Corrected Second Notice, on page 5, confirms that “claimants may choose not to submit evidence . . . with regard to the issue of costs mandated by the state at this time (*since this issue is not jurisdictional*).” (Emphasis added).

The fact that the third directive is not required to establish Commission jurisdiction at this time was confirmed verbally in telephonic communications with Commission staff. However, because the Second Corrected Notice lumps all three directives together, suggesting that the original filing date of the Joint Test Claims would be vacated if all three alleged jurisdictional defects were not cured by the stated deadline, the Joint Test Claimants cannot afford uncertainty on which requirements are jurisdictional. Written confirmation is needed.

In light of the foregoing, and in order to ensure that the record and the directives to the Joint Test Claimants are accurate and complete, the Joint Test Claimants request that the Corrected Second Notice be revised to ensure that there is no further ambiguity with regard to the Commission’s directives. To that end, we suggest that the ambiguity should be clarified by limiting the Corrected Second Notice to the alleged jurisdictional issues and removing the third non-jurisdictional directive from the “Retaining Your Original Filing Date” paragraph.

We look forward to your response. Thank you for your attention to this matter. Please contact me if you have any questions.

Very truly yours,


David W. Burhenn

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 10, 2017, I served the:

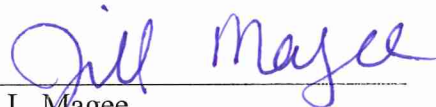
- **Claimants' Comments filed October 9, 2017**

*San Diego Region Order No. R9-2015-0001 and Order No. R9-2015-0100,
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 October 10, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/29/17

Claim Number: 15-TC-02

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

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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