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January 29, 2019
Commission on
State Mandates

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LATE FILING

January 28, 2019

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

Response to Test Claim 17-TC-14, Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Chino Hills, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 17-TC-14, submitted by the City of Chino Hills (Claimant). The Test Claim alleges state-mandated, reimbursable costs associated with an executive order (Trash Order) issued to Claimant by the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) on June 2, 2017.

The genesis of the Trash Order is Resolution No. 2015-0019 (Trash Amendments), issued by the State Water Resources Control Board on April 7, 2015. The Trash Order requires Claimant to select a track to follow to comply with the Trash Amendments to limit the discharge of trash into state waters via Claimant's Municipal Separate Storm Sewer Systems (MS4s).

Claimant's MS4 is part of their municipal sewer system. The municipal sewer system is funded at least in part by fees imposed on the system's users. Claimant asserts they are "...not aware of any designated State, federal, or non-local agency funds that are or will be available to fund the mandated activities set forth in this Test Claim." Claimant also states they are "...aware that the Legislature recently amended state law in SB 231 (Hertzberg) to define the term 'sewer' to include 'stormwater' for purposes of Articles XIII C and XIII D of the California Constitutional requirement that assessments, fees, and charges be submitted to property owners for approval...(h)owever, this legislative change has not been challenged yet in court, making it risky to rely upon."

Finance believes Claimant does have stormwater fee authority undiminished by Articles XIII C and XIII D of the California Constitution, as added by Proposition 218. Also, as Claimant notes, Senate Bill 231 (2017), effective January 1, 2018, defines "sewer" for purposes of Proposition 218 and its exception to voter approval for sewer, water and refuse collection fees. The definition specifically includes stormwater and confirms stormwater fees are not subject to the voter approval requirement, but rather the majority protest procedure, in Proposition 218.

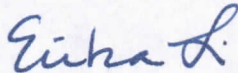
In *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal. App.4th 794, college districts challenged the State Controller's mandate claiming instructions that automatically reduced reimbursement claims by the amount the districts are statutorily authorized to charge students for health fees, regardless 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 Claimant 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. Similarly, applying the vote-exception for stormwater fees confirmed by SB 231, a majority of property owners can protest and defeat a stormwater fee, but not with the result of creating a state mandate. 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.

Further, Claimant has 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 a process that 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. Under Government Code section 17556, subdivision (d), Claimant has authority to impose fees sufficient to pay for permit activities, and they are not eligible for mandate reimbursement. Because SB 231 clarifies Claimant’s authority to increase property related sewer fees and charges to recover any costs associated with the Trash Order, the Commission should reject the Test Claim in its entirety.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erika Li".

ERIKA LI
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 January 30, 2019, I served the:

- **Finance's Late Comments on the Test Claim filed January 29, 2019**

Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Chino Hills, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-14
City of Chino Hills, Claimant

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 January 30, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/9/19

Claim Number: 17-TC-14

Matter: Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Chino Hills, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017

Claimant: City of Chino Hills

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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