



October 26, 2018

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Ms. Eileen Sobeck  
State Water Resources  
Control Board  
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Sacramento, CA 95814-2828

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**RE: Notice of Complete Test Claim, Schedule for Comments, Request for Administrative Record, and Notice of Tentative Hearing Date**  
*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Tustin, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-21 City of Tustin, Claimant*

Dear Messrs. Buchanan and Eggart, and Mss. Li, Smythe, and Sobeck:

On June 1, 2018, the City of Tustin filed the above-captioned Test Claim *which is applicable to the City of Tustin only*.<sup>1</sup> Upon review, Commission staff found the Test Claim to be incomplete and notified the claimant on August 16, 2018. On September 14, 2018, the claimant filed documents to cure the Test Claim. Upon review, Commission staff finds that this Test Claim is complete and that it retains the original filing date of June 1, 2018, in accordance with section 1183.1(e) of the Commission's regulations (California Code of Regulations, Title 2).

The Commission is now requesting parties, interested parties, and interested persons to comment on the Test Claim as specified below.

### **Review of Test Claim**

Parties, interested parties, and interested persons receiving this letter are requested to analyze the merits of the Test Claim and to file written comments on or before **November 26, 2018** in accordance with sections 1183.2 and 1181.3 of the Commission's regulations. Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) If new representations of fact are made, they must be supported with documentary evidence filed with the comments on the Test Claim. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence

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<sup>1</sup> This is unusual in that, generally, a test claim functions similarly to a class action but here the Director of the Santa Ana Board acted by sending an individual letter "order" to each co-permittee, as opposed to the Board adopting and issuing a single order for all co-permittees.

in the record.<sup>2</sup> Requests for extensions of time to file comments may be filed in accordance with section 1187.9 of the Commission's regulations.

### **Claimant's Rebuttal**

Written rebuttals to written comments concerning this Test Claim may be filed and served in accordance with section 1181.3 of the Commission's regulations within 30 days of service of the written comments. (Cal. Code. Regs., tit. 2 § 1183.3.) Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) If new representations of fact are made, they must be supported with documentary evidence filed with the rebuttal. (Cal. Code. Regs., tit. 2 §§ 1183.3 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>3</sup>

### **Request for Administrative Record**

In addition, this letter is a request that the Santa Ana Regional Water Quality Control Board and the State Water Resources Control Board (as applicable) provide copies of:

- a) The official administrative record of the California Regional Water Quality Control Board, Santa Ana Region, Water Code Section 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Co-Permittees within the Jurisdiction of the Santa Ana Regional Water Quality Control Board, Effective June 2, 2017; and
- b) The official administrative record of the California State Water Resources Control Board California Regional Water Quality Control Board, Santa Ana Region, Water Code Section 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Co-Permittees within the Jurisdiction of the Santa Ana Regional Water Quality Control Board, Effective June 2, 2017.

Specifically, the Commission requests the record that was before the board(s) when they considered or adopted California Regional Water Quality Control Board, Santa Ana Region, Water Code Section 13383 Order to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Co-Permittees within the Jurisdiction of the Santa Ana Regional Water Quality Control Board, Effective June 2, 2017 and on which they based their decision with regard to the permit requirements.

Please provide these documents as soon as possible but not later than **November 26, 2018**.

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<sup>2</sup> Government Code section 17559(b), which 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.

<sup>3</sup> Government Code section 17559(b), which 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.

### **Process for Filing Comments**

The Commission has prepared a mailing list of parties, interested parties, and interested persons for this Test Claim. The mailing list will be uploaded to the Commission's website and an e-mail notification of its availability will be sent to everyone on the list who has provided an e-mail address. A hard copy will be provided to persons who have not provided an e-mail address and to any person who requests a hard copy. (Cal. Code. Regs., tit. 2 § 1181.4.)

You are advised that if written materials are filed in hard copy, the filing must simultaneously be served on everyone on the mailing list, and be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. For instructions on electronic filing, please see the Commission's website at [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php). The comments will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting and the comment period. This procedure will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.3.

### **Tentative Hearing Date**

This Test Claim is tentatively set for hearing on **May 27, 2022**, but may be set for hearing at an earlier time if consolidated with other *Santa Ana Regional Water Quality Control Board, Trash Order* test claims.

The executive director will determine whether to consolidate the *Santa Ana Regional Water Quality Control Board, Trash Order* test claims (17-TC-07 through 17-TC-24) for hearing after the files are closed and legal staff reviews the records.

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.

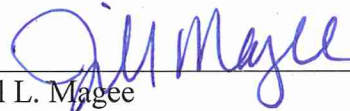
On October 26, 2018, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, Request for Administrative Record, and Notice of Tentative Hearing Date issued October 26, 2018**
- **Test Claim filed by the City of Tustin on June 1, 2018**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Tustin,  
Santa Ana Regional Water Quality Control Board, Effective June 2, 2017,  
17-TC-21  
City of Tustin, 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 October 26, 2018 at Sacramento, California.



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

## Mailing List

**Last Updated:** 10/16/18

**Claim Number:** 17-TC-21

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

**Claimant:** City of Tustin

### 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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