



DEPARTMENT OF
FINANCE

RECEIVED
September 20, 2017
**Commission on
State Mandates**

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September 19, 2017

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

**California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2010-0016, 11-TC-03**

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim on the California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016. 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, San Diego 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, claimants identified potentially offsetting revenue, including access to county stormwater funds, fuel tax and community services revenue, lighting and maintenance revenue, development/business registration fees and benefit assessments 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 September 25, 2017, I served the:

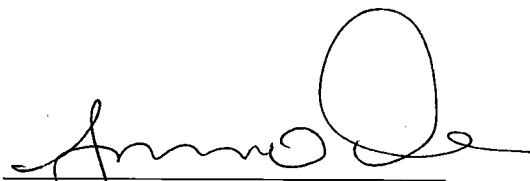
- **Finance Comments on the Test Claim filed September 20, 2017**

*California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2010-0016, 11-TC-03*

County of Riverside, Riverside County Flood Control and Water Conservation
District, Cities of Murrieta, Temecula, and Wildomar, 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 September 25, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/21/17

Claim Number: 11-TC-03

Matter: California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016

Claimants: City of Murrieta
City of Temecula
City of Wildomar
County of Riverside
Riverside County Flood Control and Water Conservation 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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