



# Santa Clara Valley Water District

---

**File No.:** 17-0776

**Agenda Date:** 12/12/2017

**Item No.:** 10.1.

---

## BOARD AGENDA MEMORANDUM

### **SUBJECT:**

Application for Leave to File Late Claim for Claim of Thomas Wingens/4355 Monterey Rd., LLC.

### **RECOMMENDATION:**

Deny the application to file a late claim.

### **SUMMARY:**

Claimant's attorney, Timothy Lundell, filed a claim on behalf of Thomas Wingens/4355 Monterey Rd., LLC claiming that on January 8, 2017, Uvas Dam overtopped, spilling into Uvas creek and causing flood damage to the claimant's property.

The claim (Attachment 1) was received by the Clerk of the Board on July 13, 2017 and was returned to Mr. Lundell as untimely. In response, Mr. Lundell corresponded with Risk Management requesting the Application for Leave for Late Filing (Attachment 2) be granted. Subsequently, on August 21, Mr. Lundell filed with the board for leave to file a late claim (Attachment 3).

Government Code Section 911.2 states that a claim relating to . . . injury or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action. Government Code Section 911.4-911.6 states that, when a claim is not presented within the six-month window, the claimant can apply to the Board and that the board shall grant an application for a late claim where the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim.

Claimant is represented by counsel, who is presumed to have knowledge of all statutes and deadlines regarding the filing of claims. Since the claim was not timely filed and there is no excusable neglect, the Board should deny the application to file a late claim.

### **FINANCIAL IMPACT:**

There is no financial impact associated with this item.

### **CEQA:**

The recommended action does not constitute a project under CEQA because it does not have a

---

potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

**ATTACHMENTS:**

Attachment 1: Claim

Attachment 2: Late Claim Addressed to Risk Management

Attachment 3: Late Claim Addressed to Clerk of the Board

Handout 10.1-A, Hechtman

**UNCLASSIFIED MANAGER:**

Stan Yamamoto, 408-630-2755