

State Water Resources Control Board

RECEIVED

September 23, 2016

**Commission on
State Mandates**

September 23, 2016

VIA DROP BOX

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

Subject: Request to Extend Briefing Date and Continue Hearing Date for Test Claims 10-TC-01 (San Mateo County), 10-TC-02 (Alameda County), 10-TC-03 (Santa Clara County), and 10-TC-05 (City of San Jose)

Dear Ms. Halsey:

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) has received the Commission on State Mandates' (Commission's) September 22, 2016, request for additional briefing and notification that the hearings on Test Claims 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05 (Bay Area Test Claims) have been consolidated. The Regional Water Board supports the consolidation of the Bay Area Test Claims and thanks the Commission for exercising its discretion to hear the claims together. However, we respectfully request the Commission to exercise its discretion to extend the October 21, 2016, briefing date and continue the May 26, 2017, consolidated hearing date pursuant to California Code of Regulations, title 2, section 1187.9, because the California Supreme Court's decision in *Department of Finance v. Commission on State Mandates (Department of Finance)* is not yet final. We suggest continuing the hearing date until January 26, 2018, the hearing date originally scheduled for the San Jose test claim (10-TC-05). We propose submitting the additional briefing 60 days prior to the hearing date.

Extensions or continuances of hearing dates and other deadlines that necessitate the postponement of a hearing may be granted upon a clear showing of good cause. (Cal. Code Regs., tit. 2, § 1187.9, subds. (b) and (c).) Here, the following factors clearly demonstrate good cause for extending the briefing and hearing dates: a significant, unanticipated change in the status of the matter, the proximity of the briefing date, the impact of granting a postponement on other pending matters, the absence of prejudice to any party, and the absence of any previous requests to postpone the hearing. (See Cal. Code Regs., tit. 2, § 1187.9, subds. (b)(1)-(2) and (c)(2).)

The filing of the petition for rehearing in *Department of Finance* is a significant, unanticipated change in the status of the matter because it means that the Supreme Court's holding will not necessarily be final as of the October 21, 2016, briefing date. (Cal. Rules of Court, rule 8.264, subd. (c)(2).) The Los Angeles Regional Water Quality Control Board (Los Angeles Regional Board) filed a petition for rehearing of *Department of Finance* on Tuesday, September 13, 2016, and the Supreme Court has notified the Los Angeles Regional Board that the Court will decide whether to grant or deny the petition by November 27, 2016. This means that neither the

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Regional Water Board nor the claimants are likely to know whether or not the Court's August 29, 2016, decision will stand before briefing is due in October. Moreover, if the Supreme Court grants the petition or indicates that it will modify its decision, the law on a key issue, directly affecting the claims of the Bay Area permittees, will remain unsettled for an undetermined period of time. It would be premature and speculative to require briefing on the effect of *Department of Finance* on the Bay Area Test Claims, much less hold a hearing on those claims, before the case has been reheard or the decision modified. Rescheduling the hearing on all claims for January 26, 2018, with briefing due 60 days in advance, would provide adequate time for the issues pertinent to the Bay Area Test Claims to become final.

Granting a postponement of the briefing and hearing dates for the Bay Area Test Claims would also help to ensure that these claims are resolved consistently with pending challenges to other municipal stormwater permits. Hearings on test claims against the Santa Ana and San Diego Regional Water Boards will be held in January, March, and May 2017, the same timeframe as the May hearing the Commission has set for the Bay Area Test Claims. Postponing briefing and continuing the San Francisco Bay Region's hearing until after these hearings have taken place will permit the Commission's decisionmaking to inform the San Francisco Regional Water Board's briefing. Building on this decisionmaking and the results of these earlier hearings would not only reduce the risk of inconsistent rulings on standards affecting all three boards' permits, but make the hearing process more efficient and streamlined.

Furthermore, extending the briefing and hearing dates will prevent, rather than create, prejudice to the claimants by avoiding premature decisionmaking and reliance on a ruling that could still be modified. Both the Regional Water Board and the claimants could potentially spend unnecessary staff time and public resources analyzing the effect of *Department of Finance* on the Bay Area Test Claims if briefing takes place before the Supreme Court has ruled on the petition for rehearing.

Finally, the Regional Water Board has not previously requested a continuance of a hearing date, and seeks one now not to delay the proceedings unnecessarily, but to ensure that the claims raised are resolved efficiently, comprehensively, and according to settled principles of law.

Thank you for your consideration of the Regional Water Board's requests. Please let me know if you have any questions. I can be reached at (916) 327-4439.

Sincerely,



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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 27, 2016, I served the:

CRWQCB Request for Extension and Postponement and Notice of Postponement of Denial and Extension Request Partial Approval

Municipal Regional Stormwater Permit – County of San Mateo, 10-TC-01
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Brisbane, Claimant

Municipal Regional Stormwater Permit – County of Alameda, 10-TC-02
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Alameda, Claimant

Municipal Regional Stormwater Permit – County of Santa Clara, 10-TC-03
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
County of Santa Clara, Claimant

Municipal Regional Stormwater Permit – Municipal Operations (C.2), 10-TC-05
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of San Jose, 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 September 27, 2016 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-02

Matter: Municipal Regional Stormwater Permit - County of Alameda

Claimant: City of Alameda

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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