



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

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,



Digitally signed by
Marnie Ajello
Date: 2016.09.23
12:34:21 -07'00'

Marnie Ajello
Attorney

cc: Michael Lauffer, Chief Counsel; Michael.Lauffer@waterboards.ca.gov
Frances McChesney, Acting Assistant Chief Counsel;
Frances.McChesney@waterboards.ca.gov
Tamarin Austin, Attorney IV; Tamarin.Austin@waterboards.ca.gov
Thomas Mumley, Assistant Executive Officer, San Francisco Bay Regional Water
Quality Control Board; Thomas.Mumley@waterboards.ca.gov
Keith Lichten, Watershed Management Division Chief;
Keith.Lichten@waterboards.ca.gov
Dale Bowyer, Section Leader; Dale.Bowyer@waterboards.ca.gov
Selina Louie, Water Resource Control Engineer; Selina.Louie@waterboards.ca.gov
Sue Ma, Water Resource Control Engineer; Sue.Ma@waterboards.ca.gov

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.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/27/16

Claim Number: 10-TC-05

Matter: Municipal Regional Stormwater Permit - Municipal Operations (C.2)

Claimant: City of San Jose

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.)

Marni Ajello, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 327-4439

marnie.ajello@waterboards.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Tamarin Austin, *State Water Resources Control Board*

Office of Chief Counsel, 1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 341-5171

Tamarin.Austin@waterboards.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Shanda Beltran, General Counsel, *Building Industry Legal Defense Foundation*

Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, CA 92614

Phone: (949) 553-9500

sbeltran@biasc.org

Cindy Black, City Clerk, *City of St. Helena*

1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
cityclerk@cityofstheleena.org

Dale Bowyer, Section Leader, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2323
Dale.Bowyer@waterboards.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
danielle.brandon@dof.ca.gov

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916) 595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@munil.com

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Norberto Duenas, City Manager, *City of San Jose*
Claimant Representative
200 East Santa Clara Street, 17th Floor, San Jose, CA 95113

Phone: (408) 535-8111
Norberto.duenas@sanjoseca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, *Legislative Representative, California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Leah Goldberg, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1901
leah.goldberg@sanjoseca.gov

Catherine George Hagan, *Senior Staff Counsel, State Water Resources Control Board*
c/o San Diego Water Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

Mary Halterman, *Principal Program Budget Analyst, Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Mary.Halterman@dof.ca.gov

Sunny Han, *Project Manager, City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Dorothy Holzem, *Legislative Representative, California State Association of Counties*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
dholzem@counties.org

Thomas Howard, *Executive Director, State Water Resources Control Board*
P.O. Box 2815, Sacramento, CA 95812-2815
Phone: (916) 341-5599
thoward@waterboards.ca.gov

Justyn Howard, *Program Budget Manager, Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*

3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Margo Laskowska, *City of San Jose*

Office of the City Attorney, 200 E Santa Clara St, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1969
margo.laskowska@sanjoseca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*

1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
mlauffer@waterboards.ca.gov

Kim-Anh Le, Division Manager, *County of Santa Clara*

Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5251
kim-anh.le@fin.sccgov.org

Keith Lichten, Division Chief, *San Francisco Bay Regional Water Quality Control B*

Watershed Management, 1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2380
klichten@waterboards.ca.gov

Selina Louie, Water Resource Control Engineer, *San Francisco Bay Regional Water Quality Control B*

1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2383
SLouie@waterboards.ca.gov

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Thomas Mumley, Assistant Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2395
thomas.mumley@waterboards.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Elizabeth Pianca, Deputy County Counsel, *County of Santa Clara*
70 West Hedding Street, East Wing, 9th Floor, San Jose, CA 95110-1770
Phone: (408) 299-5920
elizabeth.pianca@cco.sccgov.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Wayne Shimabukuro, *County of San Bernardino*
Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor, San

Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-411
jolene_tollenaar@mgtamer.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Bruce Wolfe, Executive Officer, *San Francisco Bay Regional Water Quality Control B*
1515 Clay Street, Suite 1400, Oakland, CA 94612
Phone: (510) 622-2314
bwolfe@waterboards.ca.gov

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

T.J. Yang-Wurm, *County of Santa Clara*
Controller-Treasurer, 70 West Hedding Street, East Wing, 2nd Floor, San Jose, CA 95112
Phone: (408) 299-5200
tjyang-wurm@fin.sccgov.org