



September 27, 2016

Ms. Marni Ajello
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

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

Re: Notice of Postponement 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

And

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

Dear Ms. Ajello:

On September 23, 2016, the Commission on State Mandates (Commission) received a request from the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), for an extension of time to submit written comments on how the recent California Supreme Court opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles), Case No. S214855, should apply to the above-captioned Test Claims, and a request to postpone the tentative hearing date. Written comments are currently due by October 21, 2016, and the matter has been tentatively scheduled for hearing on May 26, 2017. The Regional Water Board requests a postponement of the tentative hearing date from May 26, 2017 until January 26, 2018, with written comments due 60 days before the proposed January 2018 hearing.

The request is based on the grounds that Case No. S214855 is not yet final; that the state has filed a petition for rehearing in Case No. S214855; and that the California Supreme Court has extended the time the decision in that case becomes final and the time for the court to either grant

or deny the petition for rehearing until November 27, 2016 (after the time for which written comments in this case are currently due). The request asserts that if the Supreme Court grants the petition or indicates that it will modify the 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. The request further asserts that granting an extension and postponement of the hearing would help to ensure that the claims are resolved consistently with pending challenges to other municipal stormwater permits, which will prevent prejudice to the parties.

Request for Postponement of Hearing is Denied

The request to postpone the hearing until January 26, 2018 is denied. The hearing on this matter remains tentatively scheduled for **May 26, 2017**.

Government Code section 17530 requires the executive director to expedite all matters before the Commission. Government Code section 17553 further requires that the Commission adopt procedures to ensure a statewide cost estimate is adopted within 12 months after receipt of a test claim, which may be extended for up to six months. The procedures must also permit the hearing of a claim to be postponed *at the request of the claimant* “until the next scheduled hearing.” Section 1187.9(b) of the Commission’s regulations states that postponements are disfavored by the Commission, and a request to postpone a hearing “until the next regularly scheduled hearing” shall only be granted upon an affirmative showing of good cause.

The request to postpone the hearing from May 26, 2017 to January 26, 2018 is premature and, thus, an affirmative showing of good cause has not been provided. The request correctly states that a petition for rehearing has been filed in Case No. S214855. As of the date of this letter, however, the court has not granted the request or indicated that it intends to modify the decision.¹ The court has extended the date to consider the request until November 27, 2016, and under the Rules of Court, the petition for rehearing is deemed denied and the court’s decision becomes final if no action on the petition is taken by the court by November 27, 2016 (six months before the tentative May 26, 2017 hearing date). (Cal. Rules of Court, Rule 8.536.) If the court grants the petition for rehearing or modifies the decision, then the parties may file a request to postpone the hearing and the issue will be reconsidered at that time.

Therefore, the hearing on this matter remains tentatively scheduled for **May 26, 2017**. Commission staff will issue the Draft Proposed Decision approximately eight to ten weeks prior to the hearing in accordance with section 1183.6 of the Commission’s regulations.

Request for Extension of Time to File Written Comments is Granted for an Additional 60 Days

Section 1187.9(a) of the Commission’s regulations provides that so long as a postponement of a hearing would not be required, there is no prejudice to any party or interested party, and there is no other good reason for denial, the request for an extension of time to file comments shall be approved. Pursuant to section 1187.9(a) of the Commission’s regulations, and in light of the order issued by the California Supreme Court in Case No. S214855 extending the date for the

¹ See, e.g., “Judicial Council of California, 2015 Court Statistics Report, Statewide Caseload Trends, 2004-2005 through 2013-2014,” page 13, which indicates that the most recent motion to rehear a decision was granted in fiscal year 2007.

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court to consider whether or not to grant the request for rehearing until November 27, 2016, and the duty imposed under Government Code section 17530 for the executive director to expedite all matters within the jurisdiction of the Commission, the request for an extension of time to file written comments on how the California Supreme Court opinion in *Department of Finance v. Commission on State Mandates* (County of Los Angeles), Case No. S214855, should apply to the above-captioned Test Claims, is approved, at this time, for an additional **60 days**. Written comments are now due on or before **December 20, 2016**.

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 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

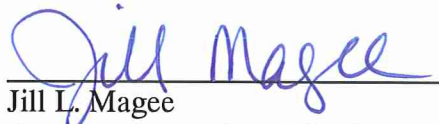
Municipal Regional Stormwater Permit – County of Alameda, 10-TC-02
California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074
City of Alameda, Claimant

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-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.)

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