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ENVIRONMENTAL PROTECTION

State Water Resources Control Board

RECEIVED
September 06, 2016
**Commission on
State Mandates**

September 6, 2016

VIA DROP BOX

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

SAN DIEGO REGION WATER PERMIT – ORANGE COUNTY, 10-TC-11

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO
REGION, ORDER NO. R9-2009-0002, EFFECTIVE DECEMBER 16, 2009

COUNTY OF ORANGE, ORANGE COUNTY FLOOD CONTROL DISTRICT, CITIES
OF DANA POINT, LAGUNA HILLS, LAGUNA NIGUEL, LAKE FOREST, MISSION
VIEJO, AND SAN JUAN CAPISTRANO, CO-CLAIMANTS

REQUEST FOR APPROVAL OF EXTENSION OF TIME TO SUBMIT COMMENTS OF
THE STATE WATER RESOURCES CONTROL BOARD AND THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

Dear Ms. Halsey:

The Commission on State Mandates (Commission) approved the State Water Resources Control Board's (State Water Board) and the San Diego Regional Water Quality Control Board's (San Diego Water Board) (collectively Water Boards) most recent request for extension of time to submit comments on the above-referenced test claim on June 15, 2016. In its notice of approval, the Commission established a comment deadline of 30 days after release of the Supreme Court decision the matter of *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.*, California Supreme Court, Case No. S214855. As you know, the Supreme Court released its decision in that matter on August 29, 2016. Comments are now due on or before September 28, 2016.

While the Commission set a deadline of 30 days after release of the decision, the decision itself will not be final until September 28, 2016, *at the earliest*. (Cal. Rules of Court, rule 8.532(b)(1).) The Water Boards continue to digest and evaluate the implications of the Supreme Court decision on this and other pending municipal storm

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

water test claims. In placing these test claims in inactive status pending the outcome of the Los Angeles litigation, the Commission recognized the benefit to the Commission and the parties of having threshold mandates issues resolved by the courts before proceeding with hearings on similar test claims.¹ In its recent decision, the Supreme Court upheld the Commission's prior determination on the question of federal mandates, but remanded other unaddressed threshold issues raised by both the Water Boards and Department of Finance (DOF) and the Los Angeles claimants in the lower courts. For example, the Los Angeles claimants counter-petitioned regarding the Commission's finding in the underlying Statement of Decision that certain permit elements were not reimbursable state mandates because the Los Angeles Claimants possess sufficient fee authority to implement them. These and other threshold issues (such as what constitutes a new program or higher level of service) regarding application of unfunded mandates law in the municipal storm water context remain unresolved, yet we anticipate they will also arise in the Orange County Test Claim.

Final resolution of the Los Angeles test claim could very well shape or require further modification to any Commission decision in this case issued before the courts provide guidance on these matters. The Water Boards believe that all parties and the Commission will benefit from clarity on these issues before proceeding to hear the Orange County Test Claim. Not only would a decision subject to modification create confusion at the Water Boards and within the regulatory community, but could lead to the need for additional hearing and briefing schedules. For these reasons, the Water Boards request that the current deadline of September 28 for filing comments in response to the Test Claim be extended pending resolution of the remand of unaddressed threshold issues in the Los Angeles litigation. Alternatively, the Water Boards request an extension of time of 180 days. It is possible there will be some clarity on the issues within this time. Even absent such clarity before comments are filed, the requested extension will allow the Water Boards to prepare a more thorough, reasoned response, addressing both the threshold and claim-specific issues, in light of the Supreme Court's recent opinion.

The Water Boards believe that good cause exists for granting the requested extension and that other parties will not be prejudiced awaiting the outcome of judicial guidance on threshold issues common to the pending municipal storm water test claims. Section 1187.9, subdivision (a) of the Commission's regulations provides that as 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, a request for extension of time to file comments on a test claim shall be approved. The Orange County test claim is *tentatively* set for hearing in March 2017. If granting an extension of the comment period constrains the time the Commission requires to prepare for hearing, the Water Boards also request a corresponding postponement of the hearing date pursuant to

¹ See June 15, 2016, Notice of Approval of Extension Request, San Diego Region Water Permit-Orange County, 10-TC-11.

section 1187.9, subdivision (b) of the Commission's regulations based on consideration of all of the above relevant circumstances.

The Water Boards appreciate your consideration of this request. Please let me know if you have any questions. I can be reached at (619) 521-3012.

Sincerely,



Catherine George Hagan
Senior Staff Counsel

cc: Service List via Commission Drop Box
Michael A.M. Lauffer ([via e-mail only])
Adriana Nunez [via e-mail only]

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

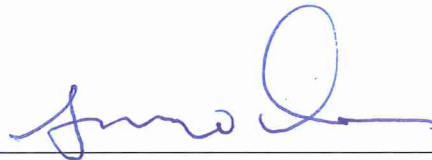
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 9, 2016, I served the:

Notice of Limited Extension Request Approval, Notice of Postponement Request Denial, Request for Additional Briefing, and Request for Additional Information
San Diego Region Water Permit – County of Orange, 10-TC-11
California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2009-0002, effective December 16, 2009
County of Orange, Orange County Flood Control District, Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, and San Juan Capistrano,
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 9, 2016 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/29/16

Claim Number: 10-TC-11

Matter: San Diego Region Water Permit - Orange County

Claimants: City of Dana Point
City of Laguna Hills
City of Laguna Niguel
City of Lake Forest
City of Mission Viejo
City of San Juan Capistrano
County of Orange
Orange County Flood Control 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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