



September 9, 2016

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Mr. David Gibson
San Diego Regional
Water Quality Control Board
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **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

Dear Ms. Hagan, Mr. Howard, and Mr. Gibson:

On September 6, 2016, the Commission on State Mandates (Commission) received your 18th request for an extension of time to submit comments on the above-named test claim. In your request, you note that the decision in *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, was issued on August 29, 2016, but will not be final until September 28, 2016, pursuant to California Rules of Court, Rule 8.532(b)(1). In addition, your request describes the fact that the Supreme Court upheld the Commission's prior determination on the question of whether the activities required by that permit were mandated by the state, which you are continuing to digest and evaluate. You also note that the Supreme Court remanded the remaining new program or higher level of service and fee authority issues to the lower courts, and that these issues may also arise in the pending Test Claim.

Your request asks that the current deadline of **September 28, 2016** for filing comments in response to the Test Claim be extended pending resolution of the remand of the Los Angeles litigation (California Supreme Court, Case No. S214855), or an extension of time of 180 days from the current comment deadline (or until March 27, 2017, three days after the date this matter is tentatively scheduled for hearing). Additionally, your request notes that in the event that the extension of the comment period constrains the time the Commission requires to prepare for hearing, a corresponding postponement of the tentatively scheduled hearing date should be granted based on consideration of the relevant circumstances described.

Request for Extension and Postponement

Your request for an extension of time until the final resolution of California Supreme Court Case No. S214855, or in the alternative, for 180 days, and the corresponding request for postponement

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of the March 2017 hearing is denied. The hearing on this matter remains tentatively scheduled for **March 24, 2017**.

Government Code section 17553 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.” Government Code section 17554 also allows the waiver of procedural requirements, with the agreement of all parties, and generally with the intent to shorten periods of time or to consolidate claims. Section 1187.9(a) of the Commission’s regulations does provide 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 extension of time made by any party shall be approved.

However, your request for an extension of time until the final resolution of the litigation, or for an additional 180 days (or until March 27, 2017), would require the postponement of the March 24, 2017 hearing. Government Code section 17553(a)(3) and Section 1187.9(b) of the Commission’s current regulations only provide *limited* authority for a party to request, and the executive director to grant, a postponement of a hearing “until the next regularly scheduled hearing” and Section 1187.9(b) of the Commission’s current regulations provide that this is only upon an affirmative showing of good cause. The next regularly scheduled hearing of the Commission after the March 2017 hearing is the hearing scheduled for May 19, 2017. Items heard on the Commission’s May 19, 2017 agenda require the issuance of a draft proposed decision not later than March 24, 2017. Thus, your request asking for an extension of time to file comments on this Test Claim until at least March 27, 2017, cannot be granted under the Commission’s current regulations.

Moreover, an affirmative showing of good cause for postponement of the hearing in this case has not been provided. Section 1187.9(b)(1) of the Commission’s regulations provides examples of good cause, which include the Commission’s backlog of matters and whether the interests of justice are best served by a postponement. The resolution of this test claim, as well as 13 other pending stormwater test claims, were delayed pursuant to the Commission’s prior regulations,¹ first due to a historic backlog of test claims pending with the Commission,² and second because of the stormwater litigation in California Supreme Court Case No. S214855. With the exception of the pending stormwater test claims, the test claim backlog has since been eliminated.³ And while the Supreme Court’s decision in Case No. S214855 is not technically final until

¹ Former California Code of Regulations, title 2, section 1183.01(c), which did not contain time limitations on the executive director’s authority to postpone a matter.

² This backlog resulted in it taking an average of approximately five years to adopt a statewide cost estimate from the time of filing a test claim during the time period from about 2003 to 2013 and the reasons for this backlog are discussed at length in the Commission’s annual Report to Finance and Backlog Reduction Plan, which may be found on the Commission’s website.

³ For test claims filed since 2013, excluding the stormwater claims, the Commission has been adopting test claims within an average of 13 months and statewide cost estimates within an average of 21 months from the time of the test claim filing.

September 28, 2016, the court has not indicated that the decision will be modified, nor has any motion been filed requesting a rehearing or modification. Such motions are rarely granted.⁴ In addition, issues relating to whether permit requirements impose a new program or higher level of service and whether there are increased costs mandated by the state pursuant to Government Code sections 17514 and 17556(d) will depend, in part, on the facts of each individual permit.

Since the court has not stayed the Commission's proceedings on this Test Claim, we are proceeding pursuant to Government Code section 17500 et seq., and the Commission's regulations. As indicated below, we are requesting additional briefing on how the Supreme Court's decision applies in this Test Claim, and the comment period is extended to allow the comments on the test claim and the decision to be filed together on **October 10, 2016**.

Request for Comments on the Supreme Court Decision

The Commission requests additional briefing on how the Supreme Court's decision in Case No. S214855 should apply to the above-entitled Test Claim, and provides a 30-day comment period from the date of this letter for all parties, interested parties, and interested persons for that purpose. Comments are due **October 10, 2016**.

Request for Additional Information

In addition, this letter is a request that the San Diego Regional Water Quality Control Board and the State Water Resources Control Board (as applicable) supplement the record of the above-captioned Test Claim by filing with the Commission on State Mandates (Commission) copies of:

- a) The official administrative record of the California State Water Quality Control Board, San Diego Region permit order no. R9-2009-0002, National Pollutant Discharge Elimination System (NPDES) no. CAS0108740; and
- b) The official administrative record of the California State Water Resources Control Board permit order no. R9-2009-0002 (NPDES no. CAS0108740).

Specifically, the Commission requests the record that was before the boards when they adopted permit order no. R9-2009-0002 and NPDES no. CAS0108740.

Please provide these documents as soon as possible but not later than **October 10, 2016**.

The Commission's regulations require that written materials filed with the Commission be simultaneously served on all parties, interested parties, and interested persons on the mailing list, and accompanied by a proof of service. (Cal. Code Regs., tit. 2, 1181.3) However, this requirement may be satisfied by electronically filing your documents via the Commission's e-filing system. Please see http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website. The written material will be posted on the Commission's website and the mailing list will be notified by electronic mail of the posting. This procedure will satisfy all the service requirements pursuant to section 1181.3 of the Commission's regulations.

⁴ 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.

Ms. Hagan, Mr. Howard, and Mr. Gibson

September 9, 2016

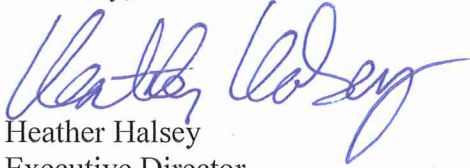
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Appeal of Executive Director's Decision

Please note that section 1181.1(c) of the Commission's regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. Any appeal must be submitted in writing within 10 days of being served notice of the executive director's action.

Because these records are particularly large, please contact Commission Program Analyst Jill Magee at (916) 323-3562 if you need assistance filing these records electronically.

Sincerely,



Heather Halsey
Executive Director

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

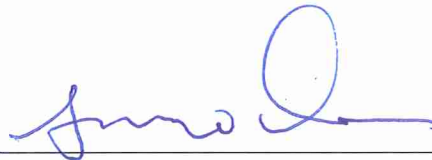
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 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.



Lorenzo Duran Jr.
Commission on State Mandates
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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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