



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board



September 19, 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 OF THE STATE WATER RESOURCES CONTROL BOARD AND THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION FOR EXTENSION OF TIME TO SUBMIT THE ADMINISTRATIVE RECORD FOR THE UNDERLYING SAN DIEGO REGION MS4 PERMIT, R9-2009-0002

Dear Ms. Halsey:

On September 9, 2016, the Commission on State Mandates (Commission) approved a limited extension request until October 10, 2016 for the State Water Resources Control Board (State Water Board) and the San Diego Regional Water Quality Control Board (San Diego Water Board) (collectively Water Boards) to submit written comments on the above-referenced test claim. Also on September 9, 2016, the Commission for the first time requested that the Water Boards submit a copy of the official administrative record(s) for the underlying Municipal Separate Storm Sewer System (MS4) permit, R9-2009-0002 (NPDES No. CAS0108740) on October 10, 2016.

While numerous southern Orange County permittees filed petitions for review of San Diego Water Board NPDES Permit/Order No. R9-2009-0002 with the State Water Board in January 2010, the permittees asked at the time of filing that the petitions be held in abeyance. The petitions, identified by the State Water Board as SWRCB/OCC File A-2073, remain in abeyance in accordance with State Water Board regulations (see Cal. Code Regs, *tit.* 23, sec. 2050.5(d)). Because the petitions challenging the permit have never been activated for review by the State Water Board, the administrative record for the permit has never been compiled by the San Diego Water Board. Other than petitions for review in SWRCB/OCC File A-2073 and related

correspondence, no administrative record for substantive review of the underlying permit exists at the State Water Board.

Section 1187.9(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. An extension of time to submit information in response to the Commission's September 9 request for a copy of the administrative record is not squarely covered by section 1187.9(a) of the regulations but the bases for good cause described in that regulation apply in this instance.¹

The administrative record as such does not yet exist as it was not required to be prepared in connection with the petitions for review of Order No. R9-2009-0002 filed with the State Water Board in January 2010. The timeframe for permit development spanned a three year period and we anticipate the record to be voluminous. While staff are already undertaking to prepare the record in response to the request, we anticipate it will take a significant amount of time to identify and compile all the relevant documents dating back to 2006 and to prepare a comprehensive index of the materials. Additionally, as part of the process of developing and adopting the permit, at least three public hearings and four public workshops were conducted between March 2007 and December 2009 when the permit was adopted. During that timeframe, the San Diego Water Board's practice of audio recording board hearings relied on cassette tapes. The process of converting cassette recordings is time consuming. Where possible, the San Diego Water Board also is seeking to obtain from the court reporting company prepared transcripts of the public hearings. The San Diego Water Board believes the Commission and all parties would benefit from inclusion of transcripts in lieu of audio recordings hearings where practical. It is unclear how quickly the transcripts can be obtained for inclusion in the record. Finally, the same staff preparing the record are also assisting in the preparation of written comments responding to the Test Claim, which are required to be filed on or before October 10, 2016. For these reasons, the Water Boards seek a 30-day extension of time to submit the record.

The Water Boards believe that these above considerations establish good cause for granting the requested extension. An extension limited in this manner should not necessitate a postponement of the tentatively scheduled hearing. Nor will it prejudice other parties, the public or interested persons. The requested extension would coincide with the timeframe for the submittal of Claimants' rebuttal under the Commission's regulations at section 1183.3. Simultaneous submittal of the record and Claimants' rebuttal will ensure that the Commission has the administrative record available to it once the written submittals on the Test Claim are complete. The Water Boards are not aware of any other good reason that the extension should not be granted.

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 or at Catherine.Hagan@waterboards.ca.gov. Alternatively you may contact David T. Barker, the San Diego Water Board Branch Chief overseeing the MS4 Program and the staff developing the

¹ Alternatively, the Water Boards request an extension of time to submit the administrative record as a partial appeal of the Executive Director's September 9, 2016 request under section 1181.1(c) of the Commission's regulations.

administrative record. He can be reached at (619) 521-3007 or at David.Barker@waterboards.ca.gov.

Sincerely,



Catherine George Hagan
Senior Staff Counsel

cc: Service List via Commission Drop Box

[via email only]:

Tom Howard, Executive Director, State Water Resources Control Board

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David W. Gibson, Executive Officer, San Diego Water Board

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Michael Lauffer, Chief Counsel, State Water Resources Control Board

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

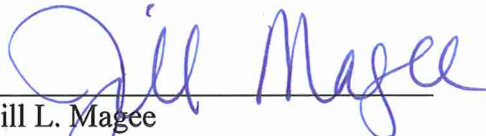
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 20, 2016, I served the:

SWRCB Request for Extension and Notice of Extension Request Approval
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 20, 2016 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/14/16

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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