



August 17, 2023

Mr. Thomas Deak
County of San Diego
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101

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

Re: Revised Notice of Extension Request Partial Approval and Postponement of Hearing

San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R

Dear Mr. Deak:

On August 15, 2023, the Commission on State Mandates (Commission) received the claimants' request for a six-month extension of time to file written comments on the above-captioned Draft Proposed Decision and Proposed Parameters and Guidelines, currently due on August 17, 2023 and for postponement of the hearing, currently set for October 27, 2023.

Specifically, the request states that: claimants intend to propose that a Reasonable Reimbursement Methodology ("RRM") be included in their comments on the Draft Proposed Decision and Parameters and Guidelines; development of the proposed RRM will require considerable coordination and information gathering between the 19 co-permittees eligible for reimbursement; and, having interviewed three candidate firms, the claimants are in the process of formalizing a contract with an engineering consultant to manage the RRM development process and estimates that it will require six months to work with all the Co-Permittees, gather the necessary information and documentation. Further, the request states that because comments are currently due by August 17, 2023, the claimants request that the Commission extend the time to submit comments on the Draft Proposed Decision and Parameters and Guidelines to February, 17, 2024 and that the hearing, currently scheduled for October 27, 2023, be postponed to the Commission's next regularly scheduled meeting after April 17, 2024.

Also, the request states that the preparation of RRM will involve numerous complex issues related to costs incurred by 19 separate public entities for a variety of mandated activities over an approximately 11-year period that ended more than 5 years ago; when reaching out regarding preparation of an RRM, Commission staff suggested reviewing the Draft Proposed Decision and Parameters and Guidelines and requesting an informal conference before proposing an RRM; and the claimants have no alternative means to prepare and submit an RRM or request the informal conference prior to the comment deadline.

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In addition, the request states that the requested extension/postponement will not prejudice any party to the test claim, which has already been pending for approximately 15 years; the State Controller's Office (Controller) has stipulated to the six-month extension and postponement request; and the State Water Resources Control Board and the San Diego Regional Water Quality Control Board (Water Boards) do not object to the extension and postponement request. Finally, the request states that the Commission recently granted the Water Boards a one-week extension of time to submit comments on the Draft Proposed Decision and Parameters and Guidelines; other than that, there have been no extensions or postponements concerning this Draft Proposed Decision and Parameters and Guidelines since the Commission served them on July 23, 2024; and the claimants respectfully submit that the reasons set forth herein constitute good cause for the requested extension and postponement.

Government Code section 17553(a)(3) permits "the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing." Similarly, section 1183.18(a)(4) of the Commission's regulations provides that "If a party or interested party to a test claim notifies Commission staff that a reasonable reimbursement methodology may be developed for inclusion in pending parameters and guidelines, the days following the date of the notification up to the date on which a reasonable reimbursement methodology is developed, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the Commission. The days tolled shall not exceed 60 days from the date of the notification." Additionally, Section 1183.18(b)(1) of the Commission's regulations (Timelines), arguably limits the extension approval to 60 days since days beyond the 60 are not counted towards tolling the time to adopt an a statewide cost estimate. Taken together, these authorities generally restrict extensions to not more than 60 days and postponements to the next regular hearing date.

Section 1187.9(a) of the Commission's regulations provide that any party or interested party to a matter may request an extension of time by filing a request with the executive director before the date set for filing of comments or rebuttals with Commission staff on that matter. The request shall fully explain the reasons for the extension, propose a new date for filing, and be certified, filed, and served in accordance with section 1181.3 of these regulations. A request that would necessitate rescheduling a hearing shall also include a request for postponement of the hearing, pursuant to subdivision (b) of this section. (Cal. Code. Regs., tit. 2 § 1187.9(a).)

Section 1187.9(b) of the Commission's regulations provide that while postponements are disfavored and pursuant to Government Code section 17530, the executive director has a duty to expedite all matters before the Commission, a request for postponement until the next regularly scheduled hearing, filed by the claimant at least 15 days before the hearing, shall be approved by the executive director for good cause. (Cal. Code. Regs., tit. 2 § 1187.9(b)(3)(A).) Circumstances that indicate good cause in this case include: the number and complexity of the issues. (Cal. Code. Regs., tit. 2 § 1187.9 (b)(1)(F).)

Therefore, a 60-day extension from the original due date is approved and the claimants' comments on the Draft Proposed Decision and Parameters and Guidelines are now due

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by **5:00 p.m. on October 16, 2023**. In addition, this matter is now set for hearing on Friday, **December 1, 2023**.

However, Government Code section 17554 provides that "With the agreement of all parties to the claim, the Commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods." Therefore, a six-month extension from the original due date (to February 19, 2024) will be granted and the matter will be set for hearing on Friday, May 24, 2024, if the claimant submits a written stipulation of the parties to the Commission on or before the claimant comment deadline of **5:00 p.m. on October 16, 2023**. The parties to this matter are the claimant, Finance, the Controller, and the Water Boards.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

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 August 17, 2023, I served the:

- **Current Mailing List dated August 14, 2023**
- **Revised Notice of Extension Request Partial Approval and Postponement of Hearing issued August 17, 2023**

San Diego Regional Water Quality Control Board Order No. R9-2007-0001, Permit CAS0108758, Parts D.3.a.(3)(b)(iii), D.5.a.(1), D.5.a.(2), D.5.b.(1)(a), D.5.b.(1)(b)(iii-vi), D.5.b.(1)(c), D.5.b.(1)(d), D.5.b.(2), D.5.b.(3), E.2.f., E.2.g., F.1., F.2., F.3., I.1., I.2., I.5., J.3.a.(3)(c)(iv)-(viii), (x)-(xv), the first sentence of L.1. as it applies to the newly mandated activities, and L.1.a.(3)-(6), 07-TC-09-R County of San Diego, Cites of Carlsbad, Del Mar, Imperial Beach, Lemon Grove, Poway, San Marcos, Santee, Solana Beach, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, San Diego, and Vista, 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 August 17, 2023 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/14/23

**Claim
Number:** 07-TC-09-R

Matter: San Diego Regional Water Quality Control Board Order No. R9-2007-0001 Permit CAS0108758 Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c)iv-viii & x-xv, and L.

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City of Chula Vista
City of Del Mar
City of Encinitas
City of Escondido
City of Imperial Beach
City of La Mesa
City of Lemon Grove
City of National City
City of Oceanside
City of Poway
City of San Diego
City of San Marcos
City of Santee
City of Solana Beach
City of Vista

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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