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August 23, 2022

Via Drop Box

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Request for Extension of Time to File Comments on Draft Proposed Decision on California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections IX, X, XI, XII XIII and XVII, 09-TC-03

Dear Ms. Halsey:

Pursuant to Cal. Code Regs. tit.2, § 1187.9,¹ I am writing as Claimant Representative for Claimants in the above-referenced Joint Test Claim, to request an extension of time for Claimants to file comments on the Draft Proposed Decision in that matter, dated August 17, 2022. Such request is timely in that it is being made before the date set for filing comments or rebuttals. Cal. Code Regs. tit. 2, § 1187.9(a).

Your letter accompanying the Draft Proposed Decision indicates that written comments are due no later than 5:00 p.m. on September 7, 2022. Claimants respectfully request an extension of that deadline to 5:00 p.m. on October 14, 2022, for the following reasons:

- The Staff Recommendation and Draft Proposed Decision is 199 pages in length, covering a complex test claim with many issues of first impression for the Commission and the parties. Some of the issues raised in the Draft Proposed Decision were not briefed by either Claimants or the Water Boards/Department of Finance, and will require additional legal research in order that Claimants may meaningfully respond.

¹ All legal authority references are to the California Code of Regulations, unless otherwise stated.

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- The Draft Proposed Decision raises not only legal but factual issues which may necessitate obtaining and presenting additional evidence to the Commission. This effort may be further complicated by the fact that the subject test claim was prepared and filed in 2011, and individuals with pertinent information and/or evidence may have retired and/or are no longer employed by Claimants.
- The Draft Proposed Decision is the first since 2009 addressing substantive issues in municipal separate storm sewer system (“MS4”) permit test claims, and Claimants anticipate that interested parties, including claimants in other pending test claims involving MS4 permits, may also wish to file comments. All interested parties should be given adequate time to do so.
- Counsel involved in preparing the comments will be on pre-planned vacations in late August, September and early October.
- An extension of the comment deadline to October 14 would not require a postponement of the December 2, 2022 scheduled hearing before the Commission. Pursuant to Section 1183.6(b), a proposed draft decision can be released as late as eight weeks before the hearing date. Cal. Code Regs. tit. 2, § 1183.6(b). With three weeks required for comments, *see* Section 1183.6(c), staff would have five weeks to review the comments and prepare a final proposed decision for the Commission’s consideration. Under the schedule proposed by Claimants, however, staff would have seven weeks to do this work, and a full five weeks before the proposed November 18 release date of the final proposed decision. Thus, no postponement of the hearing date is required. To be clear, Claimants are not requesting a postponement of the hearing date for this matter.
- The requested extension would not result in prejudice to any party. The record in this matter has been closed since December 2016, and the additional time for comments would benefit the Water Board and the Department of Finance, as well as other interested parties.

Section 1187.9(a) directs 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 shall be approved.” Cal. Code Regs. tit. 2, § 1187.9(a). Claimants respectfully submit that under those standards, the request to extend the comment deadline to 5:00 p.m. on October 14, 2022 should be approved.

Thank you for your consideration of this request.

BURHENN & GEST LLP

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I declare under penalty of perjury that the foregoing, signed on August 23, 2022, is true and correct to the best of my personal knowledge, information, or belief.



David W. Burhenn

Claimant Representative

Address, phone and e-mail set forth above

cc: Claimants

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 24, 2022, I served the:

- **Current Mailing List dated August 18, 2022**
- **Notice of Extension Request Approval issued August 24, 2022**
- **Claimant's Request for Extension of Time filed August 23, 2022**

*California Regional Water Quality Control Board, Santa Ana Region,
Order No. R8-2009-0030, Sections IX, X, XI, XII, XIII, and, XVIII, 09-TC-03
Santa Ana Regional Water Quality Control Board, Resolution No. R8-2009-0030,
adopted May 22, 2009*

County of Orange, Orange County Flood Control District; and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, 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 24, 2022 at Sacramento, California.



Lorenzo Duran
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/22

Claim Number: 09-TC-03

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030

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 City of Brea
 City of Buena Park
 City of Costa Mesa
 City of Cypress
 City of Fountain Valley
 City of Fullerton
 City of Huntington Beach
 City of Irvine
 City of Lake Forest
 City of Newport Beach
 City of Placentia
 City of Seal Beach
 City of Villa Park
 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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