



July 13, 2023

Mr. David Burhenn
Burhenn & Gest, LLP
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Notice of Extension Request Approval and Postponement of Hearing
*California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2009-0002, Sections B.2.; C.; D.; F.1.d.; F.1.d.7.i.; F.1.f.; F.1.h.;
F.3.a.4.c.; F.3.d.; F.4.b.; F.4.d.; F.4.e.; G.6.; I.; J.; K.1.b.4.n.; and,
Only as They Relate to the Reporting Checklist, Section K.3.a. and
Attachment D,¹ Adopted December 16, 2009, 10-TC-11
Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo,
San Juan Capistrano, the County of Orange, and the Orange County Flood
Control District, Claimants*

Dear Mr. Burhenn:

On July 11, 2023, the Commission on State Mandates (Commission) received the claimants' request for a 35-day extension of time to file written comments on the Draft Proposed Decision on the above-captioned Test Claim, currently due on July 21, 2023 and for postponement of the hearing, currently set for September 22, 2023.

Specifically, the request states that the Draft Proposed Decision is 378 pages in length, covering a complex test claim with many issues for the Commission and the parties; some of the issues raised in the Draft Proposed Decision were not briefed by either Claimants, Water Boards, or, Department of Finance, and will require additional legal research in order that Claimants may meaningfully respond.

In addition, the request states that 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 evidence may have retired or are no longer employed by Claimants.

Further, the request states that counsel for Claimants has spoken with counsel for the Water Boards and understands that the Water Boards may also seek an extension of time to submit comments to August 25, 2023; claimants anticipate that other interested parties, including claimants in other pending test claims involving MS4 permits, may

¹ Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption, and Section K.3.a. and Attachment D only as they relate to the reporting checklist, have been properly pled.

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also wish to file comments; claimants have no objections to a request for an extension from the Water Boards and believe all parties should be given the same extension to the same date.

Finally, the request states that counsel involved in preparing the comments has several other matters in which briefs and comments must be filed by July 28, 2023, such that it will be difficult to properly prepare the comments in this matter without this requested extension of time; the requested extension would result in prejudice to any party; the record in this matter has been closed since January 6, 2017, and the Water Boards and the Department of Finance, as well as other interested parties, would also receive additional time to comment.

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.

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 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 unavailability of a party, party representative, or witness because of death, illness, or other excusable circumstances; a party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; and the number and complexity of the issues. (Cal. Code. Regs., tit. 2 § 1187.9(b)(1)(A) and § 1187.9 (b)(1)(F).) In addition, I find that the interests of justice are best served by granting the extension and postponement. (Cal. Code. Regs., tit. 2 § 1187.9(c)(2)(J).

Therefore, a 35-day extension from the original due date is approved and the claimants' comments on the Draft Proposed Decision are now due by **5:00 p.m. on August 25, 2023.**

This matter is now set for hearing on Friday, **October 27, 2023.**

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 July 14, 2023, I served the:

- **Current Mailing List dated July 6, 2023**
- **Notice of Extension Request Approval and Postponement of Hearing issued July 14, 2023**
- **Claimants' Request for Extension of Time and Postponement of Hearing filed July 11, 2023**

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections B.2.; C.; D.; F.1.d.; F.1.d.7.i.; F.1.f.; F.1.h.; F.3.a.4.c.; F.3.d.; F.4.b.; F.4.d.; F.4.e.; G.6.; I.; J.; K.1.b.4.n.; and, Only as They Relate to the Reporting Checklist, Section K.3.a. and Attachment D,¹ Adopted December 16, 2009, 10-TC-11

Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, San Juan Capistrano, the County of Orange, and the Orange County Flood Control District, 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 July 14, 2023 at Sacramento, California.

David Chavez

David Chavez
Commission on State Mandates
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¹ Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption, and Section K.3.a. and Attachment D only as they relate to the reporting checklist, have been properly pled.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/6/23

Claim Number: 10-TC-11

Matter: California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections B.2.; C.; D.; F.1.d.; F.1.d.7.i.; F.1.f.; F.1.h.; F.3.a.4.c.; F.3.d.; F.4.b.; F.4.d.; F.4.e.; G.6.; I.; J.; K.1.b.4.n.; and, Only as They Relate to the Reporting Checklist, Section K.3.a. and Attachment D, Adopted December 16, 2009

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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