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March 04, 2020  
Commission on  
State Mandates

# Office of the City Manager

February 28, 2020

Heather Halsey, Esq.  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Test Claim No. 17-TC-25: Claimant City of Grand Terrace's Request for Consolidation of Test Claims 17-TC-07 through 17-TC-28, on Water Code Section 13383 Phase I MS4 Trash Orders Issued by Santa Ana Regional Water Quality Board (Effective June 2, 2017), and Request for 60 Day Extension to File Rebuttal to Water Boards' Comments**

Dear Ms. Halsey:

This correspondence is in regard to the January 27, 2020 comments filed by the State Water Resources Control Board (State Water Board) and the Santa Ana Water Quality Control Board (Santa Ana Water Board) (collectively referred to as "Water Boards"). The City of Grand Terrace ("Claimant") requests a 60 day extension of time to file a rebuttal to the Water Boards' comments. The reasons for granting this request are set forth below.

Further, the City of Grand Terrace requests that, pursuant to section 1183.5 of the California Code of Regulations (Commission Regulations), you exercise your authority as Executive Director to consolidate Test Claims 17-TC-07 through 17-TC-28 ("the Test Claims"), for the same reasons stated in the County of Orange's letter dated February 21, 2020 (Attached as Exhibits A and B Respectfully and incorporated by reference is the following correspondence: County of Orange's letter dated February 21, 2020 and Commission's February 27, 2020 letter to County of Orange Granting Extension, ).

## **Procedural Background**

On a November 21, 2018, the Commission staff approved requests by the Water Boards for an extension of time to file comments and submit the administrative record on Claimant's test claim. This approval established a due date of January 28, 2019.

On January 22, 2019, the Water Boards requested a second extension of time to file comments and submit the administrative record on Claimant's test claim. The Water Boards were granted an extension up to March 29, 2019.

The Water Boards requested a third extension of time to file comments on Claimant's test claim, stating that the administrative record would be filed by the current deadline. The time to file comments was extended to May 28, 2019. The Water Boards subsequently requested a third extension of time to file the administrative record, which was granted up to May 28, 2019.

On May 16, 2019, the Water Boards requested an additional extension of time to file comments. The due date was extended to July 29, 2019.

On July 9, 2019, the Water Boards requested an additional 45 day extension to submit comments. The Commission approved a 60 day extension up to September 27, 2019. On September 25, 2019, the Water Boards requested a 60 day extension to submit comments. An extension was granted up to November 26, 2019.

On November 20, 2019, the Water Boards requested an additional 45 day extension of time to submit comments. The Commission approved a 60 day extension up to January 27, 2020. The Commission noted that Claimant's rebuttal comments were to be due 30 days from the date of service of the Water Boards' comments.

The Water Boards filed their comments to Claimant's test claim on January 27, 2020. Claimant's rebuttal is currently due to be filed on March 5, 2020 (which is 30 days after service of the Water Boards' comments).

On February 27, 2020, the Commission granted County of Orange an extension to May 4, 2020.

### **Basis for Request**

California Code of Regulations §1187.9(a) allows any party to request an extension of time by filing a request with the executive director before the date set for filing of a rebuttal with Commission staff on that matter. 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.

The Water Boards, which were given several months of extensions, have filed a voluminous comments requiring additional time for a response.

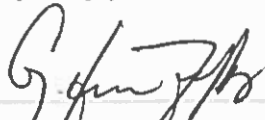
Further, the decision on consolidation would potentially impact the preparation of Test Claimants' rebuttals. Therefore, an extension until 60 days after service of your decision on consolidation is requested.

The hearing on Claimant's test claim is currently scheduled for September 22, 2023. The extension of time to file a rebuttal will not require a postponement of the hearing. Additionally, this extension would not result in prejudice to any party or interested party, and there is otherwise no good cause for denying this request. Good cause exists to grant the extension as Claimant requires additional time to analyze the Water Boards' comments and supporting documents, as well as to prepare the rebuttal. This is Claimant's first request for an extension of time to file its rebuttal.

Given the time-sensitive nature of this request, I respectfully ask that you provide notice of your determination of the request for consolidation and request for extension as soon as possible.

I declare under penalty of perjury that the foregoing, signed on February 28, 2020, is true and correct to the best of my personal knowledge, information, or belief.

Very truly yours,



---

G. Harold Duffey,  
City Manager

MV: CMC

Enclosure: Exhibits A, B

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# EXHIBIT A



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February 21, 2020

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

Re: Second Request for Consolidation of Test Claims 17-TC-07 through 17-TC-24 and 17-TC-26, on Water Code Section 13383 Phase I MS4 Trash Orders Issued by the Santa Ana Regional Water Quality Control Board (Effective June 2, 2017), and Request for Extension of Time to File Rebuttal to Comments

Dear Ms. Halsey:

I am the Claim Representative for the County of Orange on Test Claim 17-TC-24. I write to again request that, pursuant to section 1183.5 of the California Code of Regulations (Commission Regulations), you exercise your authority as Executive Director to consolidate Test Claims 17-TC 07 through 17-TC-24 and 17-TC-26 (“the Test Claims”), which concern virtually identical orders issued by the Santa Ana Regional Water Quality Control Board. Consolidation of the Test Claims, especially in light of the substantively identical comments filed by the State Water Quality Control Board and the Regional Water Quality Control Board, Santa Ana Region (collectively, “the Water Boards”), is not only appropriate but necessary in order to ensure complete, fair and timely resolution.<sup>1</sup>

The request to consolidate the Test Claims was previously made in correspondence dated November 16, 2018. There, the County explained that, given the substantively identical nature of the orders issued, common questions of law and fact predominated the Test Claims and that consolidation was, therefore, warranted under Commission Regulation, section 1183.5(a).<sup>2</sup> In addition to the legal basis for consolidation, the County also explained that the resource savings and claims management efficiencies that would be realized from consolidation further justified such action, and that counsel for the Water Boards and for the Department of Finance supported consolidation.

These same reasons still apply. Moreover, the Water Boards’ comments, which were served on February 4, 2020, and which are substantively identical across all claims, further demonstrate that there is no reason why the Test Claims should not go forward and be managed as a

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<sup>1</sup> See Cal. Code Reg. 1183.5.

<sup>2</sup> *Id.*

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consolidated proceeding before the Commission.<sup>3</sup> Based on both the Water Boards and Commission staff's practice of issuing extension requests and notices for all the Test Claims in a single submission/filing, it appears that the Test Claims are already being treated as consolidated for claims management purposes. Your action to consolidate the Test Claims now would formalize this practice and allow all parties, and particularly the Test Claimants, to take advantage of the same efficiencies.

In addition to consolidation, Test Claimants also request an extension of the deadline to file rebuttal comments. Since your decision on consolidation would potentially impact the preparation of Test Claimants' rebuttal(s), we request an extension until 60 days after service of your decision on consolidation.<sup>4</sup> Since the earliest tentative hearing date for any Test Claim is not until May of 2021, an extension would not require a postponement of a hearing, there would be no prejudice to any party or interested party, and there is no other good reason for denial.<sup>5</sup>

Given its time sensitive nature, I kindly ask that you provide notice of your determination of the request for consolidation and request for extension as soon as possible, but no later than February 28, 2020.

Thank you for your consideration of the foregoing. Should you have any questions or wish to discuss anything further, please contact me directly at (714) 834-6046.

I declare under penalty of perjury that the foregoing, signed on February 21, 2020, is true and correct to the best of my personal knowledge, information, or belief.

Very truly yours,

LEON J. PAGE  
COUNTY COUNSEL

By   
Julia C. Woo, Deputy

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<sup>3</sup> While awaiting response to the November 16 consolidation request, on or about March 22, 2019, during a telephone discussion, you indicated that you would not make a determination on the issue of consolidation until after the Water Boards' comments were filed.

<sup>4</sup> Rebuttal to the comments of the Water Boards and the late-filed comments of the Department of Finance are currently due on March 5, 2020. Test Claimants request extension of this deadline until sixty days after service of your determination of the consolidation request. The Department of Finance filed comments on 17-TC-24 after its January 28, 2019 deadline. In correspondence dated February 15, 2019, the County requested that these comments not be considered given their untimeliness, or that, in the alternative, if the comments were to be considered, that the County be granted an extension to respond. Without addressing the first portion of this request, by notice dated February 20, 2019, Commission staff granted an extension to file a rebuttal to the Department of Finance comments, co-terminus with the deadline to file a rebuttal to the Water Boards' comments, which is currently March 5, 2020.

<sup>5</sup> Cal. Code Reg. 1187.9(a). See also matrix of tentative hearing dates entitled "Commission on State Mandates 41 Pending Test Claims" dated January 24, 2020.

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Page 3

JCW:vl

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# EXHIBIT B





February 27, 2020

Ms. Julia Woo  
County of Orange  
333 West Santa Ana Blvd., Suite 407  
Santa Ana, CA 92701

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

**RE: Notice of Extension Request Approval**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to County of Orange,  
Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-24  
County of Orange, Claimant*

Dear Ms. Woo:

On February 24, 2020, the Commission on State Mandates (Commission) received the County of Orange's (claimant's) request for consolidation of "Test Claims 17-TC-07 through 17-TC-24 and 17-TC-26" and an extension of time to file rebuttal comments to the Department of Finance's (Finance's) Late Comments and to the State Water Resources Control Board's and the Santa Ana Regional Water Quality Control Board's (Water Boards') comments until 60 days after service of the decision on consolidation, currently due on **March 5, 2020**.

Please be reminded that these Test Claims have not been consolidated and the decision on whether to consolidate any or all of these matters for hearing will be made by the executive director *after all* comments, including the claimant's rebuttal comments, have been filed, and the records are closed and thoroughly reviewed for analysis and hearing.

Further, since these Test Claims have not been consolidated, this response singly addresses the above-captioned Test Claim, 17-TC-24. Section 1187.9(a) of the Commission's regulations provides 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 an extension of time shall be approved. Accordingly, the request for a 60-day extension of time to file rebuttal comments is approved. The claimant's rebuttal comments are now due **May 4, 2020**.

This matter remains tentatively set for hearing as specified on the Commission's updated pending caseload which may be found at: [https://www.csm.ca.gov/pending\\_caseload.php](https://www.csm.ca.gov/pending_caseload.php).

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 March 5, 2020, I served the:

- **Notice of Extension Request Approval issued March 5, 2020**
- **Claimant's Request for Consolidation of Test Claims and Extension of Time filed March 4, 2020**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Grand Terrace, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-25*  
City of Grand Terrace, Claimant

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 March 5, 2020 at Sacramento, California.

  
\_\_\_\_\_  
Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/4/20

**Claim Number:** 17-TC-25

**Matter:** Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Grand Terrace, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017

**Claimant:** City of Grand Terrace

### 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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