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SECRETARY FOR  
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

**RECEIVED**  
December 11, 2018  
**Commission on  
State Mandates**

December 11, 2018

**Via Drop Box**

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

**RE: Water Boards' Request for Extension to File Comments and the Administrative Record(s)**  
*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to the Cities of Grand Terrace, Irvine, Placentia, and Rialto, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017*  
*Test Claim Nos. 17-TC-25 to 17-TC-28*

Dear Ms. Halsey:

The Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) and the State Water Resources Control Board (State Water Board) (collectively, Water Boards) request a 28-day extension pursuant to section 1187.9 of the Commission's regulations to file written comments and to submit the administrative record(s) in the above-captioned Test Claims. If granted, the Water Boards would be required to file written comments and submit the administrative record(s) for the four new Test Claims concerning the Water Code Section 13383 Orders to Submit Method to Comply with Statewide Trash Provisions; Requirements for Phase I Municipal Separate Storm Sewer System (MS4) Co-Permittees within the Jurisdiction of the Santa Ana Regional Water Quality Control Board (Trash Orders) by January 28, 2019. The reasons for granting the extension are set forth below.

**Procedural Background**

The Santa Ana Water Board issued the Trash Orders to MS4 permittees within its jurisdiction to implement statewide trash requirements adopted in 2015 by the State Water Board known as the "Trash Amendments." Other Regional Water Boards likewise issued orders to implement the statewide Trash Amendments at or around the same time as the Santa Ana Water Board Trash Orders were issued.

On September 27, 2018, the Commission notified the Water Boards and other interested parties that Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Brea, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-07 submitted by the City of Brea was deemed complete. Then on October 25 and 26, 2018, the Commission notified the Water Boards and other interested parties that seventeen similar Test Claims filed by the Cities of Cypress, Huntington Beach, Newport Beach, Orange, Seal Beach, Anaheim, Chino Hills,

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Costa Mesa, Garden Grove, Laguna Woods, Lake Forest, San Jacinto, Santa Ana, Tustin, Villa Park, and Yorba Linda, and the County of Orange (17-TC-08 to 17-TC-24) were deemed complete.

On November 19, 2018, the Water Boards filed a request for a 90-day extension to file written comments and submit the administrative records in 17-TC-07<sup>1</sup> through 17-TC-24. The Commission granted a limited extension of 60 days and moved the deadline to file comments and submit the administrative record for the Test Claims to January 28, 2019. The deadline to submit comments and the administrative record for the pending Test Claim in 17-TC-05 filed by the City of San Juan Capistrano and County of San Diego challenging a similar order issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) was also extended to January 28, 2019.

On November 29, 2018, the Commission notified the Water Boards and other interested parties that four additional Test Claims related to the Santa Ana Water Board Trash Orders filed by the Cities of Grand Terrace, Irvine, Placentia, and Rialto (17-TC-25 to 17-TC-28) were deemed complete. The Commission requested that the Water Boards and other interested parties file written comments on the four Test Claims on or before December 31, 2018. The Commission also requested that the Water Boards provide copies of the official administrative record(s) for the Trash Orders by December 31, 2018.

There are now twenty-two Test Claims related to the Santa Ana Water Board Trash Orders and one Test Claim related to the San Diego Water Board Trash Order.

#### ***Basis for Request for Extension***

Section 1187.9, subdivision (a) of the Commission's regulations provides that any party or interested party may request an extension of time by filing a request with the executive director before the deadline for filing comments. If the 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 should be approved.<sup>2</sup>

The Water Boards seek a 28-day extension to file comments and submit the administrative record(s) for reasons similar to those stated in their request for an extension of the deadline for the other eighteen Test Claims. First, the Santa Ana Water Board and the State Water Board intend to coordinate efforts to analyze the merits of the related Test Claims and develop written comments. Aligning the deadlines of the related Test Claims and allowing additional time to evaluate the merits of the Test Claims in a coordinated manner will result in more complete and thorough written comments.

Second, compilation of administrative records is time and resource intensive, particularly here where the Santa Ana Water Board and the State Water Board has not previously prepared a

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<sup>1</sup> As discussed, the Test Claim submitted by the City of Brea (17-TC-07) was received prior to the other seventeen Test Claims. At the filing of the Water Boards' request, the deadline to file comments and submit the administrative record(s) for the City of Brea's Test Claim was December 28, 2018. The Water Boards did not ask for an extension of 90 days for this Test Claim, but rather asked for a 59-day extension to align the deadlines for all related Test Claims.

<sup>2</sup> The Commission's regulations do not specifically address extensions of time for submitting administrative records. Thus, the Water Boards apply section 1187.9, subdivision (a) to both their request for an extension of time to file comments and their request for an extension to submit the administrative record(s).

record for the development and adoption of the Trash Orders. The Water Boards anticipate that more time will be needed to prepare complete records.

Third, analyzing the merits of the twenty-two Test Claims will require substantial attorney and staff time to review the documents, research the issues, and prepare the administrative record and comments for the Test Claims. I am the Santa Ana Water Board's sole legal counsel. I am responsible for other priority duties that limit my ability to work exclusively on test claim matters, including significant permitting and cleanup matters, basin plan amendments, and preparation for board meetings. Additionally, Water Boards' staff who will be assisting in the preparation of the administrative record and comments and managerial staff who will be reviewing the comments are similarly time constrained. On top of competing work assignments, staff time is further limited by the holiday season and previously planned vacations.

The hearings on the Test Claims are tentatively scheduled between September 22, 2023 and September 22, 2024. Granting a 28-day extension for the Water Boards to file comments and to submit the administrative record(s) for the Test Claims would not require postponement of the hearings. Additionally, the Water Boards do not believe the extension would prejudice any other party or interested party and are not aware of any other good cause for denial. Accordingly, the Water Boards ask that you approve this request and extend the deadline to file comments and submit the administrative record(s) for the Test Claims in 17-TC-25 through 17-TC-28 to January 28, 2019.

Thank you for your consideration of this request. If you have any questions, I can be reached at (916) 341-5174 or by email at [Teresita.Sablan@waterboards.ca.gov](mailto:Teresita.Sablan@waterboards.ca.gov).

Sincerely,



Teresita J. Sablan  
Attorney III

cc: Service List [via Commission Drop Box]

**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.

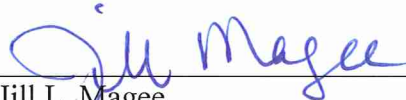
On December 14, 2018, I served the:

- **Notice of Extension Request Approval issued December 14, 2018**
- **SWRCB's and SARWQCB's Request for Extension of Time filed December 11, 2018**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Irvine, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-26  
City of Irvine, 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 December 14, 2018 at Sacramento, California.



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

## Mailing List

**Last Updated:** 12/12/18

**Claim Number:** 17-TC-26

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

**Claimant:** City of Irvine

### 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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