

RECEIVED
February 24, 2020
**Commission on
State Mandates**

February 24, 2020

**VIA E-MAIL AND
FIRST CLASS MAIL**

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

Re: City of Irvine's Request for Extension of Time to File Rebuttal to Comments 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 Joinder in County of Orange's Request for Consolidation of Test Claims 17-TC-07 through 17-TC-24 and 17-TC-26

Dear Ms. Halsey:

I am the Claim Representative for the City of Irvine (the "City") on Test Claim 17-TC-26. Pursuant to 2 Cal. Code Regs. § 1187.9(a), the City joins with the County's extension request dated February 21, 2020, and requests an extension of the deadline to submit rebuttal to the comments of the State Water Quality Control Board and the Regional Water Quality Control Board, Santa Ana Region (collectively, "the Water Boards") and the late comments filed by the Department of Finance ("DOF") for the same period of time granted to the County, but at a minimum of sixty (60) days from the current due date of March 5, 2020 (i.e. May 4, 2020).¹

Pursuant to 2 Cal. Code Regs. § 11879.(a), the City requests this extension to file its rebuttal because this is the first such request on the part of the City, and is in line with the series of extensions granted to the Water Boards. Further, the City requires the extension to fully review and consider the comments raised by the Water Boards, including reviewing the voluminous administrative record prepared by the Water Board, which consists of over 32,000 pages. Additionally, the Commission's decision in regards to the County's request to consolidate the test claims listed above will impact the City's as well as the North Orange County test claimants' individual efforts to respond to the Water Board's and DOF's comments.² As such, there is ample reason to provide the requested extension.

¹ City was served with the Water Boards' comments on February 4, 2020. Rebuttal comments are currently due March 5, 2020.

² The City requests that you consolidate the above-referenced Test Claims, for all the same reasons stated in the County of Orange's letter dated February 21, 2020 (attached hereto and

Ms. Heather Halsey
February 24, 2020
Page 2

Additionally, the Commission should grant the extension as no party or interested party will be harmed from granting the extension. (2 Cal. Code Regs. § 1187.9(a).) For example, the City needs only file its **rebuttal** comments, as such, no party will be prejudiced from them being filed at a later date, as no other response is authorized under the Commission's regulations. Further, with the current hearing date set for January 27, 2023, there is no need to reschedule the current hearing date. (2 Cal. Code Regs. § 1187.9(a).) Under 2 Cal. Code Regs. § 11879, "[s]o 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.**" (Emph. added.) In light of these factors and the tentative hearing date of January 21, 2023, such 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, and the City's extension request "shall," therefore, be approved.

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

I declare under penalty of perjury that the foregoing, signed on February 24, 2020, is true and correct to the best of my personal knowledge, information, or belief.

Sincerely,

RUTAN & TUCKER, LLP



Jeffrey T. Melching
Claim Representative for City of Irvine
City Attorney, City of Irvine

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Jeremy Jungreis, City Attorney's Office
Travis Van Ligten, City Attorney's Office
Julia Woo, Office of Orange County Counsel
Thomas Lo, City of Irvine's Water Quality Administrator

incorporated by reference). The City joins in the County's requests and urges you to consolidate these nineteen test claims, which all concern substantively identical orders issued by the Regional Water Quality Control Board, Santa Ana Region.

ATTACHMENT



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February 21, 2020

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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.¹

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).² 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

¹ See Cal. Code Reg. 1183.5.

² *Id.*

consolidated proceeding before the Commission.³ 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.⁴ 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.⁵

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

³ 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.

⁴ 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.

⁵ 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.

February 21, 2020
Page 3

JCW:vl

cc: Teresita Sablan – Teresita.Sablan@Waterboards.ca.gov
Susan Geanacou – Susan.Geanacou@dof.ca.gov

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.

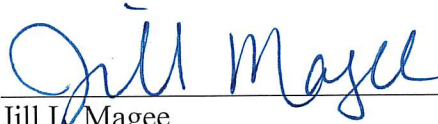
On February 28, 2020, I served the:

- **Notice of Extension Request Approval issued February 28, 2020**
- **Claimant's Request for Consolidation of Test Claims and Extension of Time filed February 24, 2020**

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 February 28, 2020 at Sacramento, California.



Jill I. Magee

Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/27/20

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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