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February 22, 2019
**Commission on
State Mandates**

February 22, 2019

Via Drop Box

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

Re: Test Claim No. 17-TC-22: Request to Disallow Untimely Comments of
Department of Finance, or, in the Alternative, for Extension of Time to File
Rebuttal

Dear Ms. Halsey:

I write in regard to the untimely comments filed by the Department of Finance (“Department”) on January 29, 2019, concerning the above-referenced test claim. The City of Villa Park (“Claimant”) requests that the Department’s untimely comments be disallowed from the record of these proceedings, or, in the event that the Department is allowed to file late comments, that Claimant be granted an extension of time to file a rebuttal to late comments submitted by the Department. The reasons for granting this request are set forth below.

Procedural Background

In correspondence dated November 21, 2018, Commission staff approved requests by the Department, the State Water Resources Control Board (“State Board”) and the Santa Ana Regional Water Quality Control Board (“Santa Ana Board”), 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 for comments on Claimant’s test claim for all three state agencies.

In correspondence dated January 23, 2019, despite Claimant’s test claim not having been consolidated with other related test claims,¹ Commission staff approved, in a single letter, a second request made by the State Board and the Santa Ana Board (collectively, “Water Boards”), for a further extension of time to file comments and submit administrative records on Test Claims 17-

¹ On or about November 16, 2018, the County of Orange (“County”) submitted a request to consolidate all test claims on the Water Code Section 13383 Trash Orders issued by the Regional Board, which, at that time, included Test Claims 17-TC-07 through 17-TC-24. The State Board and Regional Board supported the consolidation in their November 19, 2018 submittal to the Commission. The County’s request remains outstanding.

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TC-05, and 17-TC-07 through 17-TC-28. This approval established a new due date of March 29, 2019, for the Water Boards' comments on these twenty-two test claims; it did not extend the January 28, 2019, due date for Department's comments as to any test claim.

On or about January 29, 2019, the Department submitted comments on test claim 17-TC-22, which Commission staff correctly designated as a "Late Filing."

Basis for Request

Section 1183.2 of the Commission's regulations provides that written comments concerning a test claim "shall be certified, filed and served within 30 days from the date the test claim...is issued for comment."² Section 1187.9 of the Commission's regulations also provides that any party or interested party may request an extension of time by filing a request with the executive director before the date set for filing of comments.³ The Department did not request an extension of time beyond January 28 to file comments. For this reason, Department's late-filed comments should not be considered in these proceedings, and Claimant should be officially relieved by the Commission from submitting rebuttal thereto.⁴

Alternatively, if the Department is allowed to file late comments without first complying with the Commission's regulations, then Claimant requests an extension of time to submit rebuttal comments, pursuant to 2 Cal. Code. Regs. section 1187.9. The extension granted should coincide with the due date for Claimant's rebuttal to the Water Boards' comments, which are currently due on March 29, 2019. By providing an extension in this manner, Claimant will not be forced as a result of the Department's non-compliance with the Commission's regulations to file rebuttal comments twice—to its prejudice. Furthermore, the due date of any rebuttal by Claimant should not be before Claimant has received notice that the administrative record has been submitted and is available for review by Claimant. Thus, if the Commission allows the Department's late filing, then Claimant's rebuttal to the comments of the Department and the Water Boards would tentatively be due 30 days after service of the Water Boards' comments or the administrative record, whichever is served later.⁵

Disallowing the Department's untimely comments, or alternatively, granting Claimant the requested extension described herein, is consistent with 2 Cal. Code Regs. section 1187.9. Filing all rebuttal comments at the same time – and after preparation of the administrative record – will not require postponement of the test claim's hearing date, currently scheduled for March 24, 2023.

² 2 C.C.R. 1183.2 (b). All references to the Commission's regulations shall be to chapter 2.5 of Division 2 of the California Code of Regulations.

³ 2 C.C.R. 1187.9.

⁴ It should be noted that Department's late-filed comments also fail to comply with the certification requirement of section 1183.2, and should be disallowed for that reason as well.

⁵ 2 C.C.R. 1183.3(a).

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Additionally, this extension, precipitated by the Department's non-compliance with regulatory timeframes,⁶ would not result in prejudice to any party or interested party, and there is otherwise no good cause for denying this request.

Your prompt consideration and determination as to this request is greatly appreciated.

I declare under penalty of perjury that the facts in the foregoing letter, signed on February 22, 2019, is true and correct to the best of my personal knowledge, information or belief.

Sincerely,

RUTAN & TUCKER, LLP



Jeremy N. Jungreis

JNJ:tv

cc: Todd O. Litfin, City Attorney
Per Commission Mailing List

⁶ The Commission has been rigorous in its enforcement of deadlines associated with the filing of test claims, going so far as to suggest that test claims must be submitted well in advance of the deadline for filing published in the Commission's own regulations. Accordingly, should the Commission decide to exercise leniency as to deadlines for the Department, Claimant would certainly expect, as a matter of due process, that such leniency be even-handedly applied to parties before the Commission that are not state agencies.

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.

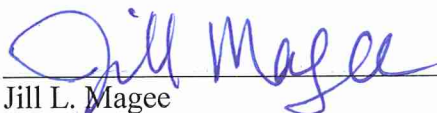
On February 22, 2019, I served the:

- **Notice of Extension Request Approval issued February 22, 2019**
- **Claimant's Request for Extension of Time filed February 22, 2019**

*Water Code Section 13383(a) Phase I MS4 Trash Order Issued to City of Villa Park,
Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-22
City of Villa Park, 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 22, 2019 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/12/19

Claim Number: 17-TC-22

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

Claimant: City of Villa Park

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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