

State Water Resources Control Board

RECEIVED

October 16, 2018

**Commission on
State Mandates**

October 16, 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 City of Brea,
Santa Ana Regional Water Quality Control Board, Effective June 2, 2017, 17-TC-
07 City of Brea, Claimant*

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 60-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 Claim. If granted, the Water Boards would be required to file written comments and submit the administrative record(s) for the Water Code Section 13383 Order 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 Order) by December 28, 2018. The reasons for granting the extension are set forth below.

The Santa Ana Water Board issued the Trash Order to implement statewide requirements known as the "Trash Amendments," adopted in 2015 by the State Water Board. 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 Order was issued.¹ 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,

¹ We note there is another 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. Comments and the administrative record(s) are currently due December 21, 2018.

Effective June 2, 2017, 17-TC-07 (Test Claim) submitted by the City of Brea was deemed complete. The Commission requested that the Water Boards and other interested parties file written comments on the Test Claim on or before October 29, 2018. The Commission also requested that the Water Boards provide copies of the official administrative record(s) for the Trash Order by October 29, 2018.

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.²

The Water Boards seek a 60-day extension to file comments and submit the administrative record(s) for several reasons. First, the Santa Ana Water Board and the State Water Board intend to coordinate efforts to analyze the merits of the Test Claim and develop written comments. In developing comments on this Test Claim, the Water Boards also wish to consider the merits of the City of San Juan Capistrano and County of San Diego's challenge to the San Diego Water Board's Order implementing the Trash Amendments in 17-TC-05 and other test claims challenging similar Regional Water Board orders, if any have been filed. Additional time to evaluate the merits of the Test Claim 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 record for the development and adoption of the Trash Order. The Water Boards anticipate that more time will be needed to prepare complete records. Third, 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 preparing for an upcoming board meeting on October 19, 2018. Competing work priorities leaves limited time for me to prepare the requested submissions by the October 29, 2018 deadline. Additionally, Water Boards' staff who will be assisting in the preparation of the administrative record and comments are similarly time constrained. Analyzing the merits of the Test Claim will require substantial attorney and staff time to review the documents, research the issues, and prepare the administrative record and comments on the Test Claim.

The hearing on the Test Claim is tentatively scheduled for January 24, 2020. Granting a 60-day extension for the Water Boards to file comments and to submit the administrative record(s) would not require postponement of the hearing. 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

² 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).

Water Boards ask that you approve this request and extend the deadline to file comments and submit the administrative record(s) to December 28, 2018.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Teresita Sablan', with a long horizontal flourish extending to the right.

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 October 19, 2018, I served the:

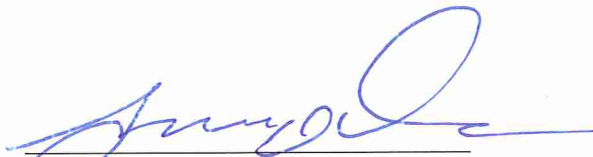
- **Notice of Extension Request Approval issued October 19, 2018**
- **State Water Resources Control Board's (SWRCB's) and Santa Ana Regional Water Quality Control Board's (SARWQCB'S) Request for Extension of Time filed October 16, 2018**

*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*

City of Brea, 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 October 19, 2018 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/18

Claim Number: 17-TC-07

Matter: 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

Claimant: City of Brea

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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