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GOVERNOR



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SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

RECEIVED
November 19, 2018
**Commission on
State Mandates**

November 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), and Support of Consolidation of Related Test Claims
Water Code Section 13383(a) Phase I MS4 Trash Order Issued to the Cities of Brea, Cypress, Huntington Beach, Newport Beach, Orange, Seal Beach, Anaheim, Chino Hills, Costa Mesa, Garden Grove, Laguna Woods, Lake Forest, San Jacinto, Santa Ana, Tustin, Villa Park, and Yorba Linda, and County of Orange, Santa Ana Regional Water Quality Control Board, Effective June 2, 2017
Test Claim Nos. 17-TC-07 to 17-TC-24

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 90-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.¹ If granted, the Water Boards would be required to file written comments and submit the administrative record(s) for the eighteen 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 February 25, 2019.² The reasons for granting the extension are set forth below.

The Santa Ana Water Board issued the Trash Orders to MS4 permittees within its jurisdiction 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

¹ As discussed below, the Test Claim submitted by the City of Brea (17-TC-07) was received prior to the other seventeen Test Claims. The deadline to file comments and submit the administrative record(s) for the City of Brea's Test Claim is currently December 28, 2018. The Water Boards do not seek an extension of 90 days for this Test Claim, but rather seek a 59-day extension to align the deadlines for all related Test Claims.

² The current deadline for Test Claims 17-TC-08 to 17-TC-24 is November 26, 2018, and ninety days from that date falls on Sunday, February 24, 2019. To avoid the weekend date, the deadline was adjusted to fall on the next weekday date: Monday, February 25, 2019.

(footnote continued on next page)

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

statewide Trash Amendments at or around the same time as the Santa Ana Water Board Trash Orders were issued.³

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. The Water Boards requested a 60-day extension to file written comments and submit the administrative record(s) for the City of Brea's Test Claim, and the Commission granted the request extending the deadline to December 28, 2018.

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, 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. The Commission requested that the Water Boards and other interested parties file written comments on the seventeen Test Claims on or before November 26, 2018. The Commission also requested that the Water Boards provide copies of the official administrative record(s) for the Trash Orders by November 26, 2018.

On November 16, 2018, the County of Orange submitted a request to consolidate Test Claims 17-TC-07 through 17-TC-24. The Water Boards support the consolidation of the pending Test Claims and any other forthcoming Test Claims related to the Santa Ana Water Board's Trash Orders. Given the similarity of the Test Claims, consolidation will help ensure the complete, fair, and timely consideration of the Test Claims. Consolidation of the Test Claims will also promote administrative efficiency for the claimants, interested parties, and the Commission.

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.⁴

The Water Boards seek a 90-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 Claims and develop written comments. In developing comments on the Test Claims, 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 Claims in a coordinated manner will result in more complete and thorough written comments.

³ 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.

⁴ 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).

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 Orders. The Water Boards anticipate that more time will be needed to prepare complete records.

Third, analyzing the merits of the eighteen 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. While the issues raised in the Test Claims are similar, preparing the comments may require the review of plans and documents that are specific to each municipality. 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. Competing work priorities leaves limited time for me to prepare the requested submissions for seventeen Test Claims by the November 26, 2018 deadline. 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 before they are submitted 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 January 24, 2020 and December 2, 2022. Granting a 90-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 (17-TC-07 to 17-TC-24) to February 25, 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.

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 November 21, 2018, I served the:

- **Notice of Limited Extension Request Approval issued November 21, 2018**
- **Department of Finance's (Finance's) Request for Extension of Time filed November 20, 2018**
- **State Water Resources Control Board (SWRCB's) and Santa Ana Regional Water Quality Control Board's (SARWQCB's) Request for Extension of Time filed November 19, 2018**

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 November 21, 2018 at Sacramento, California.



Jill I. Magee

Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/18

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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