



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Office of Chief Counsel

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Arnold Schwarzenegger  
Governor

### VIA EMAIL AND REGULAR MAIL

November 18, 2010

Nancy Patton, Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Dear Ms. Patton:

Re: **Test Claims Nos. 9-TC-03 through 09-TC-17**

California Regional Water Quality Control Board, Santa Ana Region, Order No. R9-2009-030, (NPDES No. CAS618030)

### **Request for 60 Day Extension of Time to Submit Comments of the California Regional Water Quality Control Board, Santa Ana Region**

This is a request for an additional 60 day extension of time in which to submit comments in the above-noted matter. The July 9, 2010 Notice of Complete Test Claim Filing and Schedule For Comments provides that requests for extensions of time may be filed in accordance with California Code of Regulations, title 2, chapter 2.5, sections 1183.01, subdivision (c) and 1181.1, subdivision (g). On two prior occasions, the Regional Water Quality Control Board, Santa Ana Region ("Regional Board"), has requested, and the Commission on State Mandates has approved, 60 day extensions of time in which to submit responsive comments. The current deadline is December 7, 2010. As explained herein, the Regional Board believes that good cause exists for granting an additional 60 day extension of time, which would extend the deadline to February 5, 2011. As February 5, 2011 is a Saturday, the Regional Board respectfully requests that the due date be extended to Monday, February 7, 2011.

California Code of Regulations, title 2, chapter 2.5, section 1183.01, subdivision (c), provides that a party may request an extension of time before the date set for the filing of comments. (Cal. Code Regs., tit. 2, ch. 2.5, § 1183.01, subd. (c)(1).) The Executive Director may approve a request filed by a state agency for good cause. (*Id.*, at § 1183.01, subd. (c)(1)(B).) The applicable regulations define "good cause" to include, but not be limited to, the following factors:

- (1) the number and complexity of the issues raised;
- (2) a party is new to the case, or other counsel is needed;
- (3) the individual responsible for preparing the document has other time-limited commitments during the affected period;
- (4) the individual responsible for appearing at the hearing has other time-limited commitments;
- (5) illness of a party;
- (6) a personal emergency;
- (7) a planned vacation that cannot reasonably be rearranged;
- (8) a pending public records act request; and
- (9) any other factor, which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving

deadlines that as a practical matter preclude filing the document by the due date without impairing quality.

(Cal. Code Regs., tit. 2 § 1181.1, subd. (h).)

The Test Claim filed by the County of Orange on behalf of Orange County Flood Control District and 14 municipal entities (collectively, "Claimants") concerns permit requirements established in Santa Ana Regional Board Order No. R8-2009-030, (NPDES No. CAS618030) (Waste Discharge Requirements for the County of Orange, Orange County Flood Control District, and the Incorporated Cities of Orange County within the Santa Ana Region Urban Storm Water Runoff Orange County), adopted on May 22, 2009 ("Order No. R8-2009-030). The Claimants contend that Order No. R8-2009-030 requires them to establish and implement many new programs and activities that are not required by federal law and that were not required in earlier versions of Order No. R8-2009-030. They seek a determination that these programs and activities are state mandates for which they should receive reimbursement.

For the past six years, Claimants, along with other stakeholders within the Regional Board's jurisdiction, have worked with the Regional Board on a collaborative watershed-based approach for controlling certain pollutants within the watershed. Collectively, these efforts have consumed millions of dollars of planning and engineering resources, and the final realization of these efforts has the potential to address a significant water quality issue within the watershed. Recently, Claimants, along with other stakeholders within the watershed, submitted a proposal to the Regional Board that will require immediate and significant attention by the Regional Board in order to secure potentially millions of dollars in funding for remediation efforts within the watershed that are part of this larger effort. Securing this funding, including a multi-million dollar federal grant, is crucial to continuing these water-quality improvement efforts that would benefit the entire watershed. Additionally, aspects of this proposal intersect with the underlying permit that is the subject of the test claims.

I am the sole attorney assigned to the Regional Board, and have been partially reassigned to the North Coast Regional Water Quality Control Board due to retirements at the Office of Chief Counsel. I have advised Claimants that, due in large part to my responsibility for responding to the pending test claims, I will have very limited time to devote to Claimants' proposal until after December 7, 2010. Following discussions with Claimants, it has become evident that my involvement in responding to this proposal in the next few weeks will be critical—especially if any orders will need to be drafted for consideration by the Regional Board at the upcoming January 21, 2011 Regional Board meeting. Any order drafted for consideration by the Regional Board would need to be released for public comment by early December. By extending the time for the Regional Board to respond until February 7, 2011, I will be able to focus my attention on the time-sensitive proposal at a time when my assistance is most needed. Additionally, granting this extension would allow Claimants to devote their limited legal resources to working on this proposal in the next few months as opposed to preparing rebuttal comments to the Regional Board's response on the test claims.

In conclusion, I realize that this may be a somewhat unique request. However, granting this request would allow me to fully engage with a proposal that has the possibility of creating substantial water quality improvements in the watershed. I have consulted with the Claimants and understand that they are supportive of this request. Accordingly, the Regional Board

Ms. Nancy Patton

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November 18, 2010

believes good cause exists to grant the requested extension for the Regional Board to respond until February 7, 2011.

Sincerely,

A handwritten signature in cursive script that reads "David Rice".

David R. Rice  
Staff Counsel

cc: Proof of Service  
Service List

**PROOF OF SERVICE**

I, Wanda J. Warriner, declare that I am over 18 years of age and not a party to the within action. I am employed in Sacramento County at 1001 I Street, 22<sup>nd</sup> Floor, Sacramento, California 95814. My mailing address is P.O. Box 100, Sacramento, CA 95812-0100. On November 19, 2010, I served the within documents:

**TEST CLAIMS NOS. 9-TC-03 THROUGH 09-TC-17 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION, ORDER NO. R9-2009-030, (NPDES NO. CAS618030)**

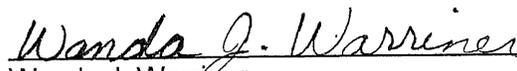
**REQUEST FOR 60 DAY EXTENSION OF TIME TO SUBMIT COMMENTS OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION**

	<b>BY FACSIMILE:</b> I caused a true and correct copy of the document to be transmitted by a facsimile machine compliant with rule 2003 of the California Rules of Court to the offices of the addresses at the telephone numbers shown on the service list.
X	<b>BY ELECTRONIC MAIL:</b> I caused a true and correct copy of the document(s) to be transmitted by electronic mail compliant with section 1010.6 of the California Code of Civil Procedure to the person(s) as shown.
	<b>BY HAND DELIVERY:</b> I caused a true and correct copy of the document(s) to be hand-delivered to the person(s) as shown.
	<b>BY OVERNIGHT MAIL TO ALL PARTIES LISTED:</b> I am readily familiar with my employer's practice for the collection and processing of overnight mail packages. Under that practice, packages would be deposited with an overnight mail carrier that same day, with overnight delivery charges thereon fully prepaid, in the ordinary course of business.
X	<b>BY FIRST CLASS MAIL TO ALL PARTIES LISTED:</b> I am readily familiar with my employer's practice for the collection and processing of mail. Under that practice, envelopes would be deposited with the U.S. Postal Service that same day, with first class postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown in this proof of service.

By placing a true copy thereof in separate, sealed envelopes addressed to:

**PLEASE SEE ATTACHED SERVICE LIST**

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on November 19, 2010 at Sacramento, California.

  
Wanda J. Warriner.  
Legal Secretary

## Commission on State Mandates

Original List Date: 7/9/2010  
Last Updated: 10/6/2010  
List Print Date: 11/19/2010  
Claim Number: 09-TC-03  
Issue: Santa Ana Region Water Permit

Mailing Information: Notice of Adopted SCE

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

Mr. Gonzalo M. Vazquez City of Cypress Department of Public Works 5275 Orange Avenue Cypress, CA 90630	<b>Claimant</b> Tel: (714) 229-6752 Fax:
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