



February 21, 2017

Ms. Marnie Ajello
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

RE: Notice of Extension Request Approval

*California Regional Water Quality Control Board, San Francisco Bay Region,
Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d,
C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and
C.12.f, 10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05
Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants*

Dear Ms. Ajello:

On February 16, 2017, the Commission on State Mandates (Commission) received a request from the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), for an additional 30-day extension of time to file a response to the Request for Additional Evidence and Briefing issued on December 2, 2016 for the above-captioned test claim and for postponement of the July 28, 2017 hearing on the above-named matter to the next regularly scheduled meeting if such 30-day extension would necessitate postponement. The request explains that despite the diligent efforts of the Regional Board, it was not able to obtain essential documents and material evidence from local agencies and stormwater associations with adequate time to compile, brief, and submit evidence by the February 21, 2017 deadline.

On February 17, 2017, the Commission received Claimant (City of San Jose) Comments on the Request for Extension objecting to the request on the grounds that Public Records Act requests to obtain the Urban Runoff Management Plans, associated Work Plans, and evidence of adoption by the Regional Board should not be required and that notices of adoption would be the best evidence of whether the plans were adopted by the Regional Board and those should be maintained by Regional Board.

On February 17, 2017, the Commission received Claimants (Counties of Alameda and San Mateo) Comments on the Request for Extension objecting to the request on the grounds that multiple extension requests from the Regional Board have already unreasonably delayed the proceedings. They further assert that this request should be denied if it would result in any further delay in the resolution of these matters since such a delay would prejudice the claimants by exacerbating the budget constraints created by the unfunded mandates challenged by these test claims.

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On February 17, 2017, the Commission received Claimant (County of Santa Clara) Comments on the Request for Extension objecting to the request on the grounds that the various additional Urban Runoff Management Plans and Work Plans would only be of potential significance if the Regional Board or State Board concurrently provided evidence of the adoption of those plans, which involves the Regional Board's or State Board's own records and therefore fails to meet the threshold showing required to establish good cause for further delay of the hearing on these matters.

As you may be aware, there is no comment period provided in the Commission's process for requests for extensions and postponements. Whether such requests are granted is subject only to the good cause provisions of the Commission's regulations and, where such approvals "may" be provided, the discretion of the executive director. Providing time for such comments and for the Commission's staff to address them only creates further delay and inhibits the ability of the executive director to expedite the process.

That said, Commission staff would point out that the Notice of Postponement Approval and Extension Request Partial Approval, issued December 23, 2016, already clarified that proof of adoption of the plans by both the state and regional board is necessary to prove that such plans have changed the permit and, without having received the filing, there is no reason to doubt that such proof will be submitted. Additionally, Commission staff are sympathetic to the claimants' concern about further delay and are working to issue a legally correct Decision on these matters as expeditiously as possible. These matters were on inactive status for many years pending the outcome of litigation which was recently resolved in the California Supreme Court. Moreover, the record in this case is well over 20,000 pages so far, compared to a typical test claim which has a record of fewer than 1,000 pages. Additionally, these Test Claims involve many complex issues of law and fact. As a result, they will take longer than a typical test claim draft proposed decision to complete.

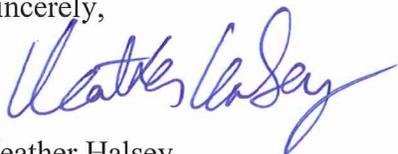
Section 1187.9(a) and (b) of the Commission's regulations provide that each request for extension and for postponement shall fully explain the reasons for the request and authorize the executive director to grant a postponement of hearing upon an affirmative showing of good cause. Specifically, the Commission's regulations provide that a party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts constitutes good cause. (Section 1187.9(b)(1)(D)). Therefore, the request for extension is granted for good cause.

The Regional Boards' response is now due **March 23, 2017**. Commission staff are working diligently to prepare this matter for hearing and the Draft Proposed Decision will be based on the law and the evidence in the record. Commission staff will attempt to keep this matter on for hearing on July 28, 2017, despite the approval of this extension request. However, the postponement may later be required, dependent on the content of the Regional Boards' filing, and this will be determined only upon review of the filing. Any additional requests for extensions of time will also require a request for postponement and an affirmative showing of good cause. Postponements are disfavored and will be avoided if possible, consistent with due process and the interests of justice.

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This matter remains tentatively set for hearing on **July 28, 2017**, at 10:00 a.m. in Room 447 of the State Capitol, Sacramento, California.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with the first name "Heather" and last name "Halsey" clearly distinguishable.

Heather Halsey
Executive Director

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 21, 2017, I served the:

CRWQCB Request for Extension; Claimant (City of San Jose) Comments on the Request for Extension; Claimants (Counties of Alameda and San Mateo) Comments on the Request for Extension; Claimant (County of Santa Clara) Comments on the Request for Extension; and Notice of Extension Request Approval

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions C.2.b, C.2.c, C.2.e, C.2.f, C.8.b, C.8.c, C.8.d, C.8.e.i, ii and iv, C.8.f, C.8.g, C.10.a.i, ii, and iii, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f,

10-TC-01, 10-TC-02, 10-TC-03, and 10-TC-05

Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara, Claimants

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 21, 2017 at Sacramento, California.



Jill L. Magee
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Last Updated: 2/9/17

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Claimant: Cities of Alameda, Brisbane, and San Jose, and County of Santa Clara

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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