



County of San Diego

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February 06, 2019
**Commission on
State Mandates**

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February 6, 2019

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Via Drop Box

RE: Test Claim No. 17-TC-05: Request to Disallow Late Filed Comments of Department of Finance, or, in the Alternative, for Extension to File Rebuttal

Dear Ms. Halsey:

The County of San Diego and City of San Juan Capistrano (collectively, "Claimant") submit this letter in response to the January 29 comments filed by the Department of Finance ("Department") to Claimant's joint test claim 17-TC-05. This letter does not constitute a rebuttal to the Department's comments, but instead requests that the Department's late-filed comments be disallowed from the record on this proceeding, or, alternatively, that Claimant be granted an extension of time to file a rebuttal to the Department's comments. The reasons for granting this request are set forth below.

Procedural Background

In correspondence dated October 11 and 19, 2018, the Commission approved requests by the Department, the State Water Resources Control Board ("State Board") and the San Diego Regional Water Quality Control Board ("San Diego Board") for an extension of time to file comments and submit the official administrative record in Claimant's test claim. This approval established a due date for the Department's comments of December 6, 2018, and a due date of December 21, 2018 for the State Board and San Diego Board to submit the administrative record and comments. The tentative hearing date for the test claim was September 25, 2020.

In correspondence dated December 6, 2018, the Commission again approved requests for an extension of time to file comments from the Department, State Board, and San Diego Board. This second extension established a January 22, 2019 due date for the

Department's comments, and a January 28, 2019 due date for the State Board and San Diego Board's comments and administrative record. The Commission set a tentative hearing date for March 26, 2021. This date has been rescheduled to January 22, 2021.

In correspondence dated January 23, 2019, despite Claimant's test claim not having been consolidated with any other test claim, Commission staff approved, in a single letter, a request made by the State Board, the San Diego Board, and the Santa Ana Regional Water Quality Control Board (collectively, "Water Boards"), for a further extension of time to file comments and submit the administrative records on Test Claims 17-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 22, 2019 due date for the Department's comments as to any test claim.

On or about January 29, 2019, the Department submitted comments on test claim 17-TC-24, 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."¹ Section 1187.9 of the 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.² The Department did not request an extension of time beyond January 22 to file comments. For this reason, the Department's late-filed comments should be disallowed from these proceedings, and Claimant relieved from submitting rebuttal thereto.³

If, however, the Commission has a valid legal basis for allowing the Department's comments as if timely filed, and chooses to so allow, Claimant, in the alternative, requests an extension of time to submit rebuttal comments, pursuant to section 1187.9. This extension of time should coincide with the due date for Claimant's rebuttal to the Water Boards' comments. Furthermore, the due date of any rebuttal should not be before Claimant has received notice that the administrative record has been submitted and is available for review. Thus, under this alternative, unless extended, Claimant's rebuttal to comments of the Department and the Water Boards would tentatively be due 30 days after service of the Water Boards' comments and the administrative record, assuming the administrative record is concurrently submitted.⁴

¹ 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.

² 2 C.C.R. 1187.9.

³ The Department's late-filed comments also fail to comply with the certification requirement of section 1183.2.

⁴ 2 C.C.R. 1183.3(a).

Disallowing the Department's late-filed claims, or alternatively, granting Claimant the requested extension of time, is consistent with section 1187.9. The hearing on Claimant's test claim is currently scheduled for January 22, 2021. Filing all rebuttal comments at the same time – and after preparation of the administrative record – will not require postponement of the hearing date. Additionally, this extension will not result in prejudice to any party or interested party, and there is otherwise no good cause for denying this request. To the contrary, granting the extension would impart much needed clarity and administrative efficiency at this point in the proceedings, by aligning deadlines for rebuttal comments from claimants across the various related test claims. Because the Commission has not yet granted our pending request for consolidation of the Water Code Section 13383 Trash Order Test Claims relating to orders issued by the Santa Ana Board, at present, these test claims are not formally being managed together, and Claimant is left with no option but to make case management requests in this ad hoc fashion.

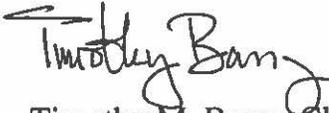
For the above reasons, Claimant requests that the Department's late-filed comments be disallowed and not considered as part of these proceedings. Alternatively, in the event the Commission determines there is a valid legal basis to allow the comments and have them considered, Claimant requests an extension of time to file a rebuttal, until such time as the due date of rebuttal to anticipated comments from the Water Boards.

Thank you for your consideration.

I declare under penalty of perjury that the foregoing, signed on February 6, 2019, is true and correct to the best of my personal knowledge, information or belief.

Sincerely,

THOMAS E. MONTGOMERY, County Counsel

By 
Timothy M. Barry, Chief Deputy

10-90318

cc Commission Mailing List

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.

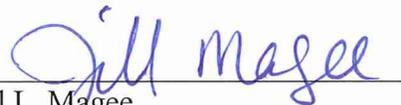
On February 7, 2019, I served the:

- **Notice of Extension Request Approval issued February 7, 2019**
- **Claimants' Request for Extension of Time filed February 6, 2019**

*California Regional Water Quality Control Board, San Diego Region,
Order No. R9-2017-0077, Sections A.1, A.3, and A.5, 17-TC-05
City of San Juan Capistrano and County of San Diego, 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 7, 2019 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/31/19

Claim Number: 17-TC-05

Matter: California Regional Water Quality Control Board, San Diego Region, Order No. R9-2017-0077, Sections A.1, A.3, and A.5

Claimants: City of San Juan Capistrano
County of San Diego

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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