

September 6, 2020

Ricardo Beas's reply to Caltrans' Response regarding the use of CMS signs for COVID-19-related announcements. The Caltrans response is found below.

Sri,

Thank you for your email of September 2, 2020, regarding Caltrans' use of CMS signs for COVID-19 infomercials, a type of messaging that appears to be advertising, for information that the public is completely aware of and has been since March of this year, almost 6 months now.

As to your response, the referenced Gov. Newsom order to state agencies does not grant any additional authority to any agency to act outside of its bounds, its jurisdictional reach, but only as it is permitted within their scope of operations and based on existing official and written policies and procedures. While it is proper for the Health Department to issue public announcements related to measures that can be taken to minimize the spread of the COVID-19, such actions are justifiable because that is the purpose of such an agency. Caltrans has no such justification or legal authority to do so.

As I mentioned in my previous conversations and correspondence with Caltrans personnel, including yourself, unless there is a specific written order to the contrary, Caltrans still must abide by the guidelines and limitations set by your own written policies and any well-intended decision to use CMS signs for health-related matters does not change that. Your department has no authority or discretion to help CDPH promote good hygiene, which is the biggest thing we have all learned from this alleged pandemic.

As noted in the Caltrans December 2013 *Changeable Message Sign Guidelines*, in the section titled *Caltrans Changeable Message Sign Policy and Summary*, page 2, it states the following: ***"CMS shall not: ... Provide information that is already obvious to the motorist."***

Further, under the authority of the Federal Highway Administration's (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), there is no waiver to deviate from a CMS system's intended purpose, even less for hygiene commercials, and you provided no written evidence to the contrary, other than a reference to some verbal communication with someone at FHWA, which was not official or backed by any official documentation approving such a change in policy, either from FHWA or Caltrans.

If we apply the directive above to the current COVID-19 emergency, it is obvious that there is not a single Californian or visitor in the state that is not aware of this, as COVID-19 messages play continuously on all TV and radio stations, so any person with a TV or home and/or automobile radio would be well informed both on the COVID-19 situation as well as the precautions one is supposed to follow to stop the spread. Everyone is impacted by COVID-19. Every single public or private business in the state has a sign outside regarding using masks, washing hands, keeping distancing, questioning anyone not using masks, etc.

To now use the CMS signs for such COVID-19 purposes is not only overkill, it becomes mental torture, where drivers can't even relax while on the freeway as he or she concentrates on driving carefully while getting home, going to work or carrying one with life's necessities. Some people are even driving by themselves with windows closed and masks on, including N95 masks that highly restrict oxygen flow and have resulted in at least one death in a car accident. People with certain health conditions, including respiratory problems, should not be using these masks, even less while driving; yet the CMS signs influence them into doing things that a logical "unafraid" mind would readily reject.

Using CMS signs for COVID-19 hygiene announcements, especially after I have presented a logical and legal explanation here why this should not be done, would be arbitrary and capricious and an abuse of discretion, resulting in misuse of the CMS system outside of its intended and basic purpose.

Thank you for reminding me to wear a mask. Do you need to see the CMS signs about using masks whenever you get on the freeway to help you remember to do so? A yes answer would be nothing less than a lie.

While the CMS signs were being used for COVID-19 announcements, they appeared to be given preference over regular traffic information, as several days prior to writing my first complaint about the CMS signs to Caltrans, I had to do a 6 hour round trip on freeways 5 & 8 and the only type of announcements I saw were the same ones related to wearing masks. Therefore, **COVID-19 messages were NOT preempted** when the CMS is needed for other immediate emergency notifications, AMBER alerts, incidents, major closures or travel times, or simply for basic travel information.

CMS signs, except when turned off and dark, should consistently display travel times and traffic-related matters, as it is explicitly noted in 2014 California Manual on Uniform Traffic Control Devices (CA MUTCD), revision 5, part 2, Chapter 2L, section 2L.02, Applications of Changeable Message Signs.

You are correct, the *"California Manual on Traffic Control Devices (CA MUTCD) and the federal highway administration Manual on Uniform Traffic Control Devices state that CMS may be used by state and local highway agencies to display safety messages, transportation-related messages, emergency homeland security messages and AMBER alert messages,"* but as mentioned above, reminding people to wash their hands and use masks does not fall in any of those categories. While there may be circumstances where it would make sense to use CMS signs to advise of a COVID-19-related event, such as roadblocks to certain areas, requiring redirecting on the freeway, again, washing hands, using masks and similar announcements don't fall in that category.

As I noted in my letter to Tammy and Jesse when I first filed my complaint,

"There is no need for people to be further bombarded in freeways and streets with messages that result in fear, anguish, desperation and nervousness, which is affecting the driver's health and his ability to be concentrating on the road and driving safety from point A to point B."

Let me take one of your statements and put it to you this way:

If tomorrow the President of the United States would announce that there was an asteroid that was coming our way and was definitely going to hit the world or at least cause all sorts of havoc on November 3, 2020, I would assume that you would agree with me that such an event would be “an unprecedented emergency” and federal and state emergency orders would follow to all agencies to prepare the world for such an event. Would it make any sense for FHWA or Caltrans to have the CMS signs consistently flashing all day saying, “***The Comet Is Hitting the Earth on November 3, 2020?***” Would that not just simply be too obvious? That is what Caltrans is doing as regards its intentions to continue to use the CMS system for COVID-19 announcements as the ones described herein.

Therefore, based on the above, I request the following:

- (1) That Caltrans take no further action in using CMS signs in any way related to public health announcements related to COVID-19, such as using masks, washing hands, staying home, not gathering, or any of the health guidance recommendations already well-publicized on TV, radio, and in every single public or private location in the state.
- (2) In the alternative, if Caltrans continues to make COVID-19-related messages, FOR PUBLIC HEALTH REASONS, that Caltrans includes messages in the CMS system advising the public of the exemptions available to them as regards not wearing a mask under certain circumstances.
- (3) If my request is denied, that Caltrans provide me all the necessary information regarding requests for reconsideration and/or appeal procedures to challenge such a decision. And
- (4) That you or an authorized representative of Caltrans reply to this email and advise what actions Caltrans plans to take as regards this request.

Respectfully,
Ricardo Beas

Caltrans' Response:

Hello Ricardo,

Thank you for writing to the California Department Transportation (Caltrans) and expressing your concerns with the display of the coronavirus disease 2019 (COVID-19) related messages on Caltrans changeable message signs (CMS) over the past few months.

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency as part of the state's response to address the global COVID-19 outbreak. The Governor's emergency proclamation orders that, "In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan as well as the California Department of Public Health and Emergency Medical Services Authority."

The California Department of Public Health determined that among other things, practicing physical distancing, avoiding gatherings, wearing face coverings, and washing hands with soap and water are effective ways to protect oneself and limit the spread of COVID-19. In conformance with the Governor's proclamation of a State of Emergency, Caltrans began displaying these COVID-19 related messages on its CMS around mid-March. These actions were and continue to be promoted by the California Department of Public Health and the Centers for Disease Control and Prevention.

The California Manual on Traffic Control Devices (CA MUTCD) and the federal highway administration Manual on Uniform Traffic Control Devices state that CMS may be used by state and local highway agencies to display safety messages, transportation-related messages, emergency homeland security messages and AMBER alert messages. COVID-19 is an unprecedented emergency as attested to by the state and federal emergency declarations and the hundreds of thousands of people affected. Caltrans initiated the display of COVID-19 messages on CMS in response to the emergency declarations, and the COVID-19 messages are preempted when the CMS is needed for other immediate emergency notifications, AMBER alerts, incidents, major closures or travel times.

Thank you again for reaching out to Caltrans regarding this matter.

*Sri
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