



## State Water Resources Control Board

July 16, 2024

**RECEIVED**  
July 16, 2024  
**Commission on  
State Mandates**

### VIA DROP BOX

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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Draft Proposed Decision, Schedule for Comments, and Notice of Hearing *California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074*, 10-TC-02, 10-TC-03, and 10-TC-05  
California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Sections C.2.b, C.2.c, C.2.e, C.2.f, C.8.b., C.8.c., C.8.d.i, C.8.d.ii., C.8.d.iii., C.8.e.i., C.8.e.ii., C.8.e.iii., C.8.e.iv., C.8.e.v., C.8.e.vi., C.8.f., C.8.g.i. (first sentence only), C.8.g.ii., C.8.g.iii., C.8.g.v., C.8.g.vi., C.8.g.vii., C.8.h, C.10.a.i., C.10.a.ii., C.10.a.iii., C.10.b.i., C.10.b.ii., C.10.b.iii., C.10.c., C.10.d.i., C.10.d.ii., C.11.f., and C.12.f., Adopted October 14, 2009, and Effective December 1, 2009  
Cities of Dublin and San Jose, and County of Santa Clara, Claimants

### REQUEST FOR EXTENSION OF TIME TO SUBMIT COMMENTS AND FOR POSTPONEMENT OF HEARING

Dear Ms. Halsey:

By letter dated July 9, 2024, the Commission on State Mandates (Commission) issued a Draft Proposed Decision, Schedule for Comments, and Notice of Hearing for Test Claims 10-TC-02, 10-TC-03, and 10-TC-05. As stated in the letter, the deadline to submit comments on the Draft Proposed Decision is July 30, 2024, and the hearing is scheduled for September 27, 2024. The State Water Resources Control Board (State Water Board) and San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) (together, Water Boards) intend to submit comments. The Water Boards respectfully ask for a 62-day extension to submit its comments by no later than **September 30, 2024**,<sup>1</sup> and for a postponement of the hearing until the next

<sup>1</sup> A 60-day extension would land on Saturday, September 28, 2024. The Water Boards ask for a 62-day extension to align with the first business day that follows.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

regularly scheduled Commission meeting on **November 22, 2024**.<sup>2</sup> The reasons supporting this request are discussed below.

Section 1187.9, subdivision (a), of the Commission's regulations provides that as long as a 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 shall be approved. A party may ask for an extension of time that requires rescheduling a hearing by also including a request for postponement of hearing (Cal. Code Regs., tit. 2, § 1187.9, subd. (a)).<sup>3</sup> The executive director may postpone the hearing for good cause. (§ 1187.9, subd. (b).)

The Draft Proposed Decision is almost 400 pages long and proposes to resolve many complex issues raised in three consolidated test claims filed almost 14 years ago. The attorneys who worked on the underlying order (Order No. R2-2009-0074 (Order)), the comments on the test claims, and the supplemental briefing are no longer with the Water Boards. Given this and the complexity and length of the Draft Proposed Decision and the filings for this consolidated matter, it will require considerable time for me to review all the relevant documents and prepare comments. Permitting staff will also need to review the Draft Proposed Decision to provide input for comments related to the Order's technical requirements. Staff and I are responsible for other priority duties that limit our ability to exclusively work on this matter, including preparing for monthly board meetings, working on significant permitting and cleanup matters and related litigation, and addressing other pressing water quality matters that impact public health and the environment. Additionally, my supervising Assistant Chief Counsel is currently on a temporary reassignment covering a leave of absence for the General Counsel of the California Environmental Protection Agency until September 1, 2024. My co-counsel who normally advises the San Francisco Bay Water Board with me is the acting Assistant Chief Counsel during our supervisor's reassignment and is not currently available to work on this matter. These circumstances affect the Water Boards' ability to work on this matter and file comments in the timeframe provided. Staff and attorney time is further limited by previously planned vacations in July, August, and September.

Extending the deadline for comments on the Draft Proposed Decision will allow the Water Boards the necessary time to review all relevant documents and prepare comments. The Water Boards are not aware of any prejudice to any party or interested person or any other good reason that the request for more time should not be granted. Granting the extension will, however, require postponement of the hearing. There is good cause for postponing the hearing. First, my co-counsel, who will also work on this matter when she returns from her reassignment, is unavailable on the currently scheduled hearing date as she will be out of the country. (See § 1187.9, subd.

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<sup>2</sup> The Commission's website lists October 25, 2024, as a tentative meeting date, but it is not clear whether this tentative meeting is a regularly scheduled meeting. Under Government Code section 17526, the Commission is required to meet once at least every two months. (Gov. Code, § 17526, subd. (b).) Based on this provision and the tentative nature of the October 25 meeting, the Water Boards presume that the November 22 meeting is the next regularly scheduled meeting.

<sup>3</sup> All further regulatory citations are to the Commission's regulations set forth in title 2 of the California Code of Regulations.

(b)(1)(A.) Second, the large number and complexity of the issues raised in the three separate test claims require additional time to adequately prepare for the hearing. (See § 1187.9, subd. (b)(1)(F).) The Water Boards are not aware of any prejudice to any party or interested person or any other good reason that the request for postponement should not be granted. (See § 1187.9, subd. (b)(2)(E).) Accordingly, the Water Boards respectfully ask that you approve this request and extend the deadline to submit written comments to **September 30, 2024**, and postpone the hearing to **November 22, 2024**.

The Water Boards appreciate your consideration of this request for extension to submit comments and postponement of the hearing. Please let me know if you have any questions. I can be reached at (916) 341-5174 or by e-mail at [teresita.sablan@waterboards.ca.gov](mailto:teresita.sablan@waterboards.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Sablan', with a long horizontal flourish extending to the right.

Teresita J. Sablan  
Attorney IV

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 July 18, 2024, I served the:

- **Current Mailing List dated July 10, 2024**
- **Notice of Partial Extension Request Approval and Postponement of Hearing issued July 18, 2024**
- **Water Boards' Request for Extension of Time and Postponement of Hearing filed July 16, 2024**

*California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, 10-TC-02, 10-TC-03, and 10-TC-05*

*California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Sections C.2.b, C.2.c, C.2.e, C.2.f, C.8.b., C.8.c., C.8.d.i, C.8.d.ii., C.8.d.iii., C.8.e.i., C.8.e.ii., C.8.e.iii., C.8.e.iv., C.8.e.v., C.8.e.vi., C.8.f., C.8.g.i. (first sentence only), C.8.g.ii., C.8.g.iii., C.8.g.v., C.8.g.vi., C.8.g.vii., C.8.h, C.10.a.i., C.10.a.ii., C.10.a.iii., C.10.b.i., C.10.b.ii., C.10.b.iii., C.10.c., C.10.d.i., C.10.d.ii., C.11.f., and C.12.f., Adopted October 14, 2009 and Effective December 1, 2009*

*Cities of Dublin 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 July 18, 2024 at Sacramento, California.



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## COMMISSION ON STATE MANDATES

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**Claim Number:** 10-TC-02, 10-TC-03, and 10-TC-05

California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2009-0074, Provisions

**Matter:** 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 vi, C.8.f, C.8.g, C.8.h, C.10.a, C.10.b, C.10.c, C.10.d, C.11.f, and C.12.f

**Claimants:** City of Dublin  
City of San Jose  
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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