

July 18, 2024

Ms. Teresita Sablan
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

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

Re: Notice of Partial Extension Request Approval and Postponement 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

Dear Ms. Sablan:

On July 16, 2024, the Commission on State Mandates (Commission) received the State Water Resources Control Board's and the San Francisco Bay Regional Water Quality Control Board's (collectively Water Boards') request for a 62-day extension of time to file written comments on the Draft Proposed Decision on the above-captioned Test Claim and for postponement of the hearing to the next regularly scheduled Commission meeting on November 22, 2024. Comments on the Draft Proposed Decision are currently due July 30, 2024, and it is currently set for hearing on September 27, 2024.

Specifically, the request states that an extension of time to September 30, 2024 and postponement of the hearing to November 22, 2024, is necessary because: the Draft Proposed Decision is almost 400 pages long and proposed 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 to review all the relevant documents and prepare comments. In addition, the request states that permitting staff will also need to review the Draft Proposed Decision to provide input for comments related to the Order's technical requirements; staff are responsible for other priority duties that limit the 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; the supervising Assistant Chief Counsel is currently on a temporary reassignment covering a leave of absence for the General Counsel of the

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California Environmental Protection Agency until September 1, 2024; the co-counsel who normally advises the San Francisco Bay Water Board is the acting Assistant Chief Counsel during the supervisor's reassignment and is not currently available to work on this matter; and staff and attorney time is further limited by previously planned vacations in July, August, and September. Finally, the request states that 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.

Government Code section 17553(a)(3) permits "the hearing of a claim to be postponed at the request of the claimant, without prejudice, until the next scheduled hearing." Additionally, Section 1183.18(b)(1) of the Commission's regulations (Timelines), arguably limits an extension approval to 60 days since days beyond the 60 are not counted towards tolling the time to adopt a statewide cost estimate. Taken together, these authorities generally restrict extensions to not more than 60 days and postponements to the next regular hearing date. However, Government Code section 17554 permits, with the agreement of all parties to the claim, the Commission to waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553.

Section 1187.9(a) of the Commission's regulations provide that any party or interested party to a matter may request an extension of time by filing a request with the executive director before the date set for filing of comments or rebuttals with Commission staff on that matter. The request shall fully explain the reasons for the extension, propose a new date for filing, and be certified, filed, and served in accordance with section 1181.3 of these regulations. A party to a matter may request an extension of time that would necessitate rescheduling the hearing, but shall also include a request for postponement of the hearing, pursuant to subdivision (b) of this section. (Cal. Code. Regs., tit. 2 § 1187.9(a).)

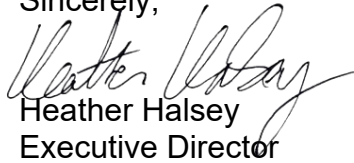
Section 1187.9(b) of the Commission's regulations provide that while postponements are disfavored and pursuant to Government Code section 17530, the executive director has a duty to expedite all matters before the Commission, a request for postponement filed by the claimant at least 15 days before the hearing shall be approved for good cause. (Cal. Code. Regs., tit. 2 § 1187.9(b)(1)(A), (b)(1)(F).)

In this case, an extension of more than 30 days would require postponement to the January hearing due to conflicting Commission workload and staff scheduling. Also, a stipulation of the parties to waive procedural requirements would be needed for a postponement of the hearing to later than the next regularly scheduled one on November 22, 2024. Therefore, a 30-day extension from the original due date and postponement of the hearing to the next regularly scheduled hearing is approved and the Water Boards' comments on the Draft Proposed Decision are now due **by 5:00 p.m. on August 29, 2024**, and this matter is now set for hearing on **Friday, November 22, 2024**.

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However, Government Code section 17554 provides that “With the agreement of all parties to the claim, the Commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553. The authority granted by this section includes the consolidation of claims and the shortening of time periods.” Therefore, a 62-day extension from the original due date (to September 30, 2024) will be granted and the matter will be set for hearing on Friday, January 24, 2025, if the Water Boards submit a written stipulation of the parties to the Commission on or before the current comment deadline of **5:00 p.m. on July 30, 2024**. The parties to this matter are the claimants, Finance, the Controller, and the Water Boards.

Sincerely,



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 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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Last Updated: 7/10/24

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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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