



January 15, 2025

Mr. Gregory Newmark
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Denial of Request to Postpone Hearing

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

*California Regional Water Quality Control Board, San Francisco 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.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., and 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., and
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 Mr. Newmark:

On January 13, 2025, claimant, City of Dublin, requested “a postponement [of the hearing in the above-captioned Test Claim] until the next regularly scheduled hearing date, March 28, 2025.” The claimant alleges good cause for the postponement based on:

The PD [Proposed Decision] is 406 pages long and raises numerous new and complex questions of law and fact in response to comments made on the draft PD by the Dublin Claimants. There is limited availability of counsel and witnesses to review these new issues, obtain essential testimony, documents, or other material evidence, despite our diligent efforts, and prepare for the hearing in the 16 days between the release of the PD and the hearing, and the Dublin Claimants’ interests will be adversely affected and prejudiced if not given adequate time to prepare for the hearing.

The request also clarifies that the City of Dublin is seeking postponement as to all parties, the postponement will not prejudice to any party or witness, and the City of San Jose has no objection to the postponement. Finally, the City of Dublin states that the request “is based on new arguments raised in the PD and represents the minimum required by Dublin Claimants to adequately prepare testimony, documents, or other material evidence in advance of the hearing” and concludes that it has no wish to postpone the hearing date further.

The relevant history of the Test Claim: The draft proposed decision on the above-stated Test Claim issued on July 9, 2024, which by operation of Commission regulation section

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1187.1(b), hearing date was set for September 27, 2024. Once the hearing is set, any request for an extension of time to file comments on the draft proposed decision or postponement of the hearing must meet the requirements of Commission regulation section 1187.9.

A request was filed on July 16, 2024, by the State Water Resources Control Board and San Francisco Bay Regional Water Quality Control Board (Water Boards) for a 62-day extension of time to submit comments and a postponement of the hearing on the matter until November 22, 2024, based on the following allegations of good cause:

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.

In response, the Commission's executive director partially granted the request and noted that any extension of time exceeding 60 days or requesting an extension beyond the next Commission meeting would require a stipulation by the parties. On July 26, 2024, the parties filed their executed stipulation for a 90-day extension for all parties to file comments on the draft proposed decision and to set the hearing on January 24, 2025. The stipulation was approved by the executive director on July 30, 2024, and the hearing was moved to January 24, 2025.

The Water Boards and the claimants filed their comments on October 28, 2024, and the Commission staff timely issued a proposed decision which included responses to the comments on January 8, 2025.

Analysis of the pending request to postpone: Government Code section 17530 requires the executive director to expedite all matters before the Commission. Section 1187.9(b) of the Commission's regulations states that postponements are disfavored by the Commission, and a request to postpone a hearing "until the next regularly scheduled hearing" shall only be granted upon an affirmative showing of good cause. Good cause is limited to certain enumerated situations including, as relevant here, a significant, unanticipated change in the status of the matter as a result of which the matter is not ready for hearing or the number and complexity of the issues. Other factors to be considered in determining whether to grant a postponement may include:

- (A) The proximity of the hearing date;
- (B) Whether there was any previous postponement, extension of time, or delay of hearing due to any party;
- (C) The length of the postponement requested;

(D) The availability of alternative means to address the problem that gave rise to the request for a postponement;

(E) The prejudice that parties or witnesses will suffer as a result of the postponement;

(F) If the matter was granted expedited scheduling, the reasons for that status and whether the need for a postponement outweighs the need to avoid delay;

(G) The Commission's backlog of matters and the impact of granting a postponement on other pending matters;

(H) Whether the claimant or requester representative is engaged in a trial or other hearing that conflicts with the Commission hearing;

(I) Whether, pursuant to Government Code 17554, all parties have stipulated to a postponement; and

(J) Whether the interests of justice are best served by a postponement, by moving forward with the hearing on the matter, or by imposing conditions on the postponement.

Finally, section 1187.9(b)(3) provides that a request filed by the claimant or requester less than 15 days before the hearing may be approved by the executive director for good cause.

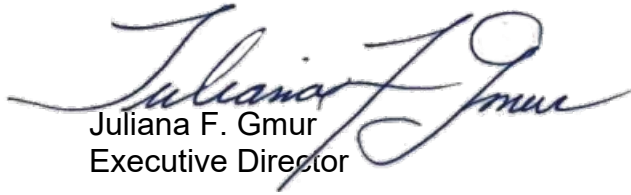
The request is denied for the following reasons:

1. The proximity of the hearing date. This request was received 11 days before the hearing date. As noted above, the executive director must expedite all matters before the Commission and postponements are disfavored.
2. The previous postponement on similar grounds. The Water Boards requested a 62-day extension of time to file comments and to postpone the September 2024 hearing to November 2024. The reason for the request was, in part, the complexity of the issues in the 384-page draft proposed decision. The parties, by stipulation, were granted a 90-day extension to file comments and the hearing was moved from September 2024 to January 2025. The Water Boards filed 12 pages of comments; the City of San Jose, 7 pages; the County of Santa Clara, 9 pages; and the City of Dublin, 19 pages. In the additional 22 pages of the proposed decision, the 47 pages of comments are summarized and any necessary response is provided. In comparing the two documents, the conclusion and the list of reimbursable activities are identical in both the draft proposed decision and the proposed decision. The claimant has not provided any specifics on the "numerous new and complex questions of law and fact" raised in the additional 22 pages and, in fact, the issues remain the same. Nor has the claimant explained how it would be prejudiced by going forward on January 24, 2025, and the "limited availability of counsel and witnesses to review these new issues, obtain essential testimony, documents, or other material evidence, despite our diligent efforts, and prepare for the hearing" that would compel a postponement.

Mr. Newmark
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Therefore, there is not a showing of good cause to postpone the hearing and the above-stated Test Claim remains set for hearing on January 25, 2025.

Very truly yours,



Juliana F. Gmur
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 January 15, 2025, I served the:

- **Current Mailing List dated January 15, 2025**
- **Notice of Denial of Request to Postpone Hearing issued January 15, 2025**
- **Claimant's Request for Extension of Time and Postponement of Hearing filed January 13, 2025**

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 January 15, 2025 at Sacramento, California.



David Chavez
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COMMISSION ON STATE MANDATES

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Last Updated: 1/15/25

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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