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**RECEIVED**  
September 08, 2023  
*Commission on  
State Mandates*

September 8, 2023

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite #300  
Sacramento, CA 95814

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*  
On Remand from *City of San Diego v. Commission on State Mandates*, Court of  
Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of  
Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-  
80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of  
San Diego Public Water System No. 3710020, effective January 18, 2017

**City of San Diego, Request for Postponement of Hearing and Extension of Time**

Dear Ms. Halsey:

The Office of the City Attorney for the City of San Diego represents the City of San Diego Public Utilities Department (Claimant) with respect to the Test Claim concerning the State Water Resources Control Board, San Diego Region, Permit Amendment No. 2017PA-SCHOOLS issued on January 18, 2017.

The Commission on State Mandates' (the Commission's) regulations provide for the postponement of hearings for good cause. 2 CCR § 1187.9(b).

Here, the Commission served its Proposed Decision on September 6, 2023, for the hearing set for September 22, 2023. This made any written response, including comments and evidence due the next day on September 7, 2023, as stated in the Commission's cover letter. Good cause exists to postpone the hearing for several reasons. I am currently engaged in a trial where trial call was recently set for September 21, 2023, in San Diego Superior Court – a day before the hearing for this matter. 2 CCR § 1187.9(b)(2)(H). The trial is scheduled for five days. The trial was originally set for September 8, 2023, but was continued due to the delay of another trial in the department.

Given the complex issues raised in the Commission's Proposed Decision, counsel will need additional time to address the merits. 2 CCR § 1187.9(b)(1)(F). The Commission's Proposed Decision reversed its Draft Proposed Decision with new, detailed analysis finding there was not

substantial evidence that the City is practically compelled to comply with the Permit Amendment. Counsel needs additional time to respond with comments and potentially produce more evidence (by declaration and/or testimony<sup>1</sup>).

There is insufficient time for the City to substantively respond and build its record given the closeness of the hearing date and counsel's impending trial date. Given this timing, good cause exists for postponement of the hearing due to the City's "inability to obtain essential testimony, documents, or other material evidence despite diligent efforts[.]" 2 CCR § 1187.9(b)(1)(D).

**The City respectfully requests postponement of the hearing to December 1, 2023, and an extension of time to file comments.** The City has not previously requested to postpone the hearing date. 2 CCR § 1187.9(b)(2)(B). The postponement of the hearing set for May 26, 2023 was not requested by either party. Finally, no party or interested party will be prejudiced.

Thank you in advance for your consideration.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By

  
Kevin B. King  
Deputy City Attorney

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<sup>1</sup> Potential testimony by City of San Diego employees would further complicate matters given that the hearing is in-person in Sacramento.

## 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 September 12, 2023, I served the:

- **Current Mailing List dated September 7, 2023**
- **Notice of Extension Request Denial and Postponement of Hearing issued September 12, 2023**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*  
On Remand from *City of San Diego v. Commission on State Mandates*, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017  
City of San Diego, Claimant

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 September 12, 2023 at Sacramento, California.

*David Chavez*

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/7/23

**Claim  
Number:** 17-TC-03-R

**Matter:** Lead Sampling in Schools: Public Water System No. 3710020

**Claimant:** City of San Diego

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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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