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October 17, 2018

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*In Support of Test Claim for Permit Amendment No. 2017PA-SCHOOLS,
City of San Diego Public Water System No. 3710020, effective January 18, 2017, 17-TC-03*

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 (“Permit Amendment”) issued on January 18, 2017.

On January 11, 2018, the City filed Test Claim 17-TC-03 with the Commission alleging that the State Water Resources Control Board (“SWRCB”) imposed the costs of K-12 school lead testing upon the Claimant without providing a legal mechanism for recovering those costs. Comments from interested parties were due to the Commission on August 13, 2018.

On August 15, 2018, the Claimant was served with comments and a legal response from the California Department of Finance (“DOF”), along with comments and the Administrative Record from the SWRCB. The AR alone is 14,806 pages in length, with many technical exhibits.

Presently, Claimant’s responses to comments from the DOF and the SWRCB are due to the Commission by October 29, 2018, and the hearing on this matter is set for January 25, 2019 (*see* Commission letter dated August 30, 2018).

However, the recent decision by the Third District Court of Appeal in *Paradise Irrigation District v. Commission on State Mandates*, 2018 WL 4691078 (Cal.App. 3 Dist., 2018) (“*Paradise*”), which addresses the availability of Proposition 218 remedies to public agencies, provides Claimant with additional good cause to request an extension of time until November 9, 2018 to respond to the comments from the DOF and the SWRCB.

The San Diego City Attorney's Office is currently preparing its legal response to the 15,493 pages of comments and exhibits submitted in response to its Test Claim, and must now evaluate the Third District's *Paradise* ruling in that context. As the *Paradise* ruling illustrates, the issues presented by the Test Claim are truly novel and complex, with potential wide-ranging impacts on water agencies throughout California.

The Commission's regulations provide for extensions of time to file comments or rebuttals and postponements and continuances of hearings. (2 CCR § 1187.9(a), (b)). Pursuant to the Commission's regulations:

"[a]ny 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. ... So 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, the request shall be approved." (2 CCR § 1187.9(a)).

Claimant's request for an extension until November 9, 2018 would not postpone the January 25, 2019 hearing, would not cause prejudice to any party or interested party, and Claimant is unaware of any good reason for the Commission to deny the request. The SWRCB has requested and received two extensions of time to respond from the original May 14, 2018 date (to June 28, 2018, and again to August 13, 2018). Along with the recent *Paradise* ruling, these developments constitute good cause to grant an extension of time until November 9, 2018 for the Claimant to fully respond to the comments of the DOF and the SWRCB.

In the event this extension request necessitates rescheduling the hearing, Claimant also includes a request for postponement of the hearing, pursuant to section 1187.9(b). At the time Claimant received an extension to respond to comments from the DOF and the SWRCB on August 30, 2018, the Commission also **moved up** the hearing date two months, from March 22, 2019 to January 25, 2019 (*see* Commission letter dated August 30, 2018).

Under 2 CCR § 1187.9(b), a party to a Test Claim may request a postponement of a hearing on that matter, upon a showing of good cause. Claimant asserts good cause exists to postpone the hearing date, in that:

- Section 1187.9(b)(1)(E): The *Paradise* ruling qualifies as a significant, unanticipated change in the status of the matter as a result of which the matter is not ready for hearing;
- Section 1187.9(b)(1)(F): The number and complexity of the issues raised by the *Paradise* ruling which must be addressed;
- Section 1187.9(b)(2)(A): The proximity of the hearing date to the November, December and January holidays affecting personnel at the City, DOF, SWRCB and the Commission itself;

- Section 1187.9(b)(2)(B): There has been no previous postponement of the hearing and there will be no prejudice to any party by a postponement, as the hearing date was moved up two months by the Commission; and
- Section 1187.9(b)(2)(C): The length of the postponement requested by Claimant is only that which may be required by the Commission to accommodate its own hearing schedule, following receipt of Claimant's responses.

Claimant, the City of San Diego Public Utilities Department, therefore requests an extension to November 9, 2018, to address the *Paradise* ruling and to fully respond to the comments of the DOF and the SWRCB. This extension will not postpone January 25, 2019 hearing of this matter. Pursuant to 2 CCR §1187.9(a), so long as a postponement of the 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 shall be approved.

In the event a postponement of the hearing is required to accommodate the Commission's schedule, Claimant alternatively requests that, good cause having been shown, that the Commission postpone the January 25, 2019 hearing on this matter to accommodate Claimant's request and the Commission's schedule.

Thank you in advance for your consideration of this request. Please contact me at (619) 236-7725 if you have any questions or concerns.

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By



Raymond C. Palmucci
Deputy City Attorney

RCP:amc

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 October 22, 2018, I served the:

- **Notice of Extension Request Approval issued October 22, 2018**
- **Claimant's Request for Extension of Time filed October 18, 2018**

*Lead Sampling in Schools, Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017, 17-TC-03
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 October 22, 2018 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/18

Claim Number: 17-TC-03

Matter: Lead Sampling in Schools, Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017

Claimant: City of San Diego

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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