

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
City and County of San Francisco)	
)	
Oceanside Water Pollution Control Plant,)	Appeal No. NPDES 20-01
Wastewater Collection System, and Westside)	
Recycled Water Plant)	
)	
NPDES Permit No. CA0037861)	
)	
_____)	

**SAN FRANCISCO’S UNOPPOSED MOTION
FOR SCHEDULE MODIFICATION**

Petitioner City and County of San Francisco (San Francisco) hereby requests that the Environmental Appeals Board (the Board) modify the schedule set in this case to (a) extend the deadline for submission of San Francisco’s reply brief in support of its Supplemental Petition for Review until September 11, 2020, and (b) reschedule oral argument in this matter for October 8, 2020. San Francisco requests these extensions to afford its new outside counsel sufficient time to prepare a reply brief and to prepare for argument in this complex matter. San Francisco’s proposed changes to the schedule will have only a modest impact on the case, extending the briefing schedule by three weeks and delaying the hearing by only two weeks.

San Francisco has consulted with counsel for Respondent U.S. Environmental Protection Agency Region 9 (EPA) prior to filing this Motion, and EPA does not oppose.

San Francisco asks that the Board grant the relief requested in this Motion for the following reasons:

1. On June 18, 2020, the Board issued an Order Denying Motion for Reconsideration and Granting Petitioner Leave to Supplement Petition for Review, with Limitations. Dkt. No. 18. The Order granted San Francisco leave to supplement its Petition for Review and set the following briefing schedule and word limitations:

San Francisco's supplement to its petition, if any, may be no more than 10,000 words and must be filed no later than June 30, 2020. The Region's response to San Francisco's supplemental petition, if any, may be no more than 10,000 words and must be filed no later than July 13, 2020. San Francisco may file a reply of no more 5,000 words no later than July 20, 2020.

Id. at 6-7.

2. San Francisco informed EPA that its outside counsel, Hunton Andrews Kurth LLP, would no longer be representing San Francisco in this appeal beginning July 1, 2020. San Francisco consulted with counsel for EPA regarding an extension of time to provide San Francisco time to engage new outside counsel.

3. On June 30, 2020, San Francisco and EPA filed a Joint Motion for Extension of Time. Dkt. No. 21. Among other things, the Joint Motion requested a ten-day extension for EPA's response brief, and a ten-day extension for San Francisco's reply.

4. On July 7, 2020, the Board issued an Order Granting Extension of Time, Scheduling Oral Argument, and Directing Parties To Provide Notice of Participation. Dkt. No. 22. This Order granted the requested ten-day extensions for EPA's response brief and San Francisco's reply brief, extending their respective deadlines to July 23, 2020, and August 12, 2020. The Board also scheduled oral argument for September 24, 2020.

5. The Region filed its Response to San Francisco's Supplement to Petition for Review on July 23, 2020. Dkt. No. 23.

6. San Francisco has worked diligently to retain outside counsel, but this process has taken much longer than anticipated due to circumstances beyond San Francisco's control. For

that reason, San Francisco filed an unopposed motion on July 30, 2020, seeking a nine-day extension of its deadline to file a reply brief. Dkt. No. 24. The Board granted that motion on August 3, 2020, extending the deadline for San Francisco to file its reply brief to August 21, 2020. Dkt. No. 25.

7. Despite its diligent efforts, San Francisco was not able to resolve the conflicts issues described in its July 30 until the end of this week. San Francisco's new outside counsel—from Beveridge & Diamond, P.C.—will only be able to start work on a reply brief and preparing for oral argument later today or early next week.

8. Because San Francisco's new attorneys have not, to date, been able to familiarize themselves with the record and to draft a reply, San Francisco is not in a position to meet the current August 21, 2020 deadline for filing a reply brief.

9. Due to the complexity of the issues and size of the record in this case, San Francisco's new attorneys will also need to invest substantial time reviewing the record and preparing for oral argument before the Board. They have not yet been able to undertake any of these efforts.

10. EPA will not be prejudiced by the modifications to the case schedule sought in this Motion. Overall, the changes being requested in this Motion will only shift the timeline for the case modestly—by two weeks. Counsel for both parties and the Board will have almost four full weeks to prepare for oral argument after briefing closes. San Francisco is also unaware of any way in which EPA would be harmed by making the adjustments requested here.

11. With retention of new counsel nearly complete, San Francisco does not anticipate the need to request any more extensions in this appeal. The City appreciates the Board's

willingness to grant the extensions that it has to date, which have afforded San Francisco time to obtain new lawyers.

For the reasons set forth above, San Francisco respectfully requests that the Board grant this Motion and enter an order:

- a. Extending the deadline for San Francisco to file its reply in support of the Supplement to Petition for Review so that the reply is due on or before September 11, 2020; and
- b. Rescheduling oral argument in this matter for October 8, 2020.

Dated: August 14, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2020, a true and correct copy of the foregoing Unopposed Motion for Schedule Modification was filed electronically using the EAB eFiling system and served on opposing counsel at the following email addresses:

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/s/ John S. Roddy
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