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11 Attorneys for Respondent
12 CITY OF SAN BERNARDINO MUNICIPAL
13 WATER DEPARTMENT

14 BEFORE THE HEARING BOARD OF THE
15 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

16 In the Matter of

17 SOUTH COAST AIR QUALITY
18 MANAGEMENT DISTRICT,

19 Petitioner,

20 v.

21 CITY OF SAN BERNARDINO
22 MUNICIPAL WATER DEPARTMENT
23 (Facility No. 11301)

24 Respondent.

CASE NO. 6124-2

**DECLARATION OF ALYSON E.
ACKERMAN**

District Rule 1196

Date: August 13, 2024

Time: 9:30 a.m.

Place: 21865 Copley Drive
Diamond Bar, CA 91765

25 I, Alyson E. Ackerman, declare:

26 1. I am an attorney at law licensed to practice before the courts of California. I am a
27 shareholder with Somach Simmons & Dunn (SSD) and counsel of record for Respondent City of
28 San Bernardino Municipal Water Department (Department). The following matters are within
my personal knowledge and, if called as a witness, I can competently testify thereto.

2. On July 10, 2024, I received notice from Senior Deputy Counsel for the South
Coast Air Quality Management District (South Coast AQMD), Kathryn Roberts, that the July 18,
2024 status hearing required by Second Revised Modified Order could not proceed as scheduled
due to a clerical error made during the public notice process.

1 3. Ms. Roberts informed me that said error necessitated re-noticing the status hearing
2 and that the soonest hearing date available to accommodate the status hearing was August 13,
3 2024.

4 4. I discussed with Ms. Roberts whether the August 13 status hearing date may create
5 any compliance issues for the Department, given the requirements of Condition 5. Ms. Roberts
6 advised me that conditions setting status hearings before the Hearing Board generally include
7 language allowing status hearings to be rescheduled as the Hearing Board calendar may allow;
8 however, neither South Coast AQMD nor the Department included this language in the orders in
9 this matter.

10 5. Despite the language in Condition 5 of the Second Revised Modified Order
11 unequivocally setting the status hearing for July 18, 2024, I understood that the public notice
12 requirements imposed on the South Coast AQMD are statutory obligations – specifically, Health
13 and Safety Code Section 40823 – and thus are superior to the conditions in the Second Revised
14 Modified Order. Because of the language in Condition 5, I requested that Ms. Roberts inquire
15 with the Clerk of the Hearing Board whether the Hearing Board was willing to issue a minute
16 order rescheduling the hearing for August 13, 2024. I further agreed to the rescheduled date on
17 behalf of the Department even in the absence of such minute order.

18 6. Ms. Roberts included me on the email communication to the Clerk of the Hearing
19 Board, who replied alerting us that it is not a practice of the Hearing Board to issue minute orders
20 for clerical errors, but assured us that the email correspondence served as “confirmation that the
21 request to reschedule the hearing has been initiated by the Clerk’s office and is through no fault of
22 the parties.” A copy of this email exchange is attached as Attachment A.

23 7. The Department’s final compliance with the Second Revised Modified Order is
24 expected soon, as detailed in the Declaration of Jennifer L. Shepardson submitted concurrently
25 herewith. However, in an abundance of caution, the parties stipulated to revising the Second
26 Modified Revised Order to include language in Condition 5 affording the Hearing Board and/or
27 Clerk flexibility to move the status hearing as may be necessary to accommodate calendaring or
28 additional public notices. Specifically, the parties stipulated to revise Condition 5 to include the

1 following clause after the date of the next status hearing: “or as soon thereafter as the Hearing
2 Board’s calendar can accommodate.” (See Stipulation to Place Matter on Consent Calendar
3 (Aug. 6, 2024).)

4 8. I declare under penalty of perjury under the laws of the State of California that the
5 facts recited above are true and correct. Executed this 6th day of August, 2024 at Sacramento,
6 California.

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8 Alyson E. Ackerman
9 Michael E. Vergara
10 Attorneys for Respondent City of San Bernardino
11 Municipal Water Department

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Attachment A

Alyson Ackerman

From: Alyson Ackerman
Sent: Friday, July 12, 2024 8:43 PM
To: Clerk of Board; Kathryn Roberts
Cc: Michael Vergara
Subject: RE: South Coast AQMD v. City of San Bern Municipal Water Department (6124-2)

Thank you for confirming, Clerk.

Alyson Ackerman

Attorney

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From: Clerk of Board <Front_PC@aqmd.gov>
Sent: Wednesday, July 10, 2024 4:15 PM
To: Kathryn Roberts <KRoberts@aqmd.gov>
Cc: Alyson Ackerman <aackerman@somachlaw.com>; Michael Vergara <mvergara@somachlaw.com>
Subject: RE: South Coast AQMD v. City of San Bern Municipal Water Department (6124-2)

Thank you for your understanding and agreement to reschedule the hearing on July 18, 2024 to August 13, 2024 to allow the Clerk's office to publish the hearing consistent with the noticing requirements of Health and Safety Code Section 40823. It is not the Board's practice to issue a Minute Order due to a clerical error. Please consider this email as confirmation that the request to reschedule the hearing has been initiated by the Clerk's office and is through no fault of the parties.

Thank you.

Clerk of the Boards

South Coast Air Quality Management District

T: (909) 396-2500

F: (909) 396-3317

www.aqmd.gov



From: Kathryn Roberts <KRoberts@aqmd.gov>
Sent: Wednesday, July 10, 2024 1:24 PM
To: Clerk of Board <Front_PC@aqmd.gov>
Cc: Alyson Ackerman <aackerman@somachlaw.com>; Michael Vergara <mvergara@somachlaw.com>
Subject: South Coast AQMD v. City of San Bern Municipal Water Department (6124-2)

Dear Clerk of the Board,

Earlier today, the Clerk informed the District that due to inadvertent error in the noticing of the upcoming status hearing in the above matter, the matter could not be held on July 18, 2024. The Clerk suggested that this status hearing could be re-noticed and set for hearing on August 13, 2024.

Counsel for the District has conferred with counsel for Respondent in this matter, and confirmed that all Parties and counsel are available for a hearing on **August 13, 2024**. However, because Condition 5 specifies the date on which the Respondent is to return to the Hearing Board, the Parties respectfully request the Hearing Board to issue a Minute Order clarifying that the hearing is to be moved to August 13, 2024 notwithstanding Condition 5 of the Modified Stipulated Order for Abatement.

Respectfully Submitted,

Kathryn Roberts

Kathryn Roberts, Esq.
Senior Deputy District Counsel
Office of the General Counsel
South Coast Air Quality Management District
Phone: 909.396.2734
Email: kroberts@aqmd.gov

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