



## Discussion and Conclusion

As stated in its title, the district's Revised Motion is based on supplemental discovery answers provided by the City. The City provided these answers on August 1, 2019, in order to comply with the Order on Prehearing Motions issued July 24, 2019.

On August 6, 2019, GMD2 filed a motion requesting, in part, a continuance of the September hearing dates (September 24-26, 2019) due to the need to review the answers submitted by the City on August 1, 2019. The district requested 90 days to have adequate time to evaluate the new information, share it with their experts for comment and otherwise prepare for the hearing. In its Response to City's Motion to Modify Order on Prehearing Motions and District's Motion for Continuance of Hearing, GMD2 summarized its request as "[T]he District is merely asking for an opportunity to properly consider the additional expert reports in preparing for the hearing and the ability to conduct depositions, if desired." (Para 17.) The request did not cite the possibility of filing revised prehearing dispositive motions.

As documented in the Status Conference Order dated August 9, 2019, the district's (and Intervenors') requests for continuance were granted "with the caution that additional continuances will not be granted absent extreme circumstances." The new hearing date was not specifically set at that time; communications were to begin promptly "between all parties to secure a new date for the hearing, preferably in November or December of 2019."

A subsequent status conference was held on September 18, 2019, primarily to address logistical issues related to the hearing. The dates of the hearing were decided, based in part on the availability of all parties, for December 10, 11, and 12, 2019. These matters are documented in the Prehearing Status Conference Order issued October 2, 2019. During the conference, no party objected to these hearing dates, requested a continuance of the dates, requested permission to file additional prehearing dispositive motions, or indicated an intention to possibly file additional prehearing dispositive motions.

The district submitted its Revised Motion on September 25, 2019, after the status conference but before issuance of the Prehearing Conference Order documenting the decisions announced during the conference.

The Presiding Officer declines to consider the district's Revised Motion for the following reasons. In the interest of fairness, consideration of this motion would require an opportunity for the other parties to submit responsive briefs and for all parties to present oral argument. In light of the difficulty previously encountered in finding dates for argument convenient for all parties, consideration of the Revised Motion would, in all likelihood, necessitate an additional continuance of the hearing. The Presiding Officer made clear such a continuance would not be

granted "absent extreme circumstances". Extreme circumstances have not been established to justify said continuance. It is noted that, if the Revised Motion were to be granted, no hearing would be required; however, a denial of the motion would require the hearing to be further delayed.

Moreover, the Presiding Officer's warning that further continuances of the hearing would not be granted "absent extreme circumstances" was expressly stated in the Status Conference Order dated August 9, 2019. At this point, the district had been in possession of the City's supplemented answers for over a week; the City had submitted them on August 1, 2019. The district expressed no intention to file additional prehearing motions until it filed the Revised Motion on September 25, 2019.

Finally, this matter is of significant public concern; the public has been given notice of opportunities to comment a number of times, only to have most of those opportunities postponed. Within this more flexible context of an administrative hearing, rather than a civil trial, the Presiding Officer finds it an appropriate exercise of discretion to hold the hearing, which will include a public comment period, as scheduled.

**IT IS SO ORDERED, THIS 9th DAY OF OCTOBER, 2019.**

  
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Constance C. Owen  
Presiding Officer

## CERTIFICATE OF SERVICE

On this 9th day of October 2019, I hereby certify that the original of the foregoing Prehearing Order on GMD2'S Revised Motion For Summary Judgment Based on Supplemental Discovery Answers Received From City was sent by electronic mail to the following:

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Constance C. Owen  
Presiding Officer