



Santa Clara Valley Water District

File No.: 24-0543

Agenda Date: 6/25/2024

Item No.: *4.9.

BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes No
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Deny the Application to File a Late Claim by Richard Ricardo Nalawagan.

RECOMMENDATION:

Deny the Application.

SUMMARY:

Santa Clara Valley Water District (Valley Water) received a claim from Richard Ricardo Nalawagan on February 9, 2024. Mr. Nalawagan's claim alleges Valley Water entered his tent without his permission on several occasions and most recently in April 2022. He seeks up to \$19,900 for pain and suffering and for various personal property items that were allegedly disposed of by Valley Water staff in April 2022.

On February 15, 2024, staff emailed Mr. Nalawagan notifying him that his claim was being returned without action as it was untimely presented. Mr. Nalawagan was also informed that he could apply to the Board of Directors to present a late claim.

On Mr. Nalawagan's behalf, Connie De La Cruz emailed a Leave to Present a Late Claim form on April 9, 2024. Mr. Nalawagan asserts that he was unable to file a timely claim due his mental state but was compelled to file a claim due to encouragement from Ms. De La Cruz.

Government Code Section 911.2 states that a claim relating to . . . injury or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action. Government Code Section 911.4-911.6 states that, when a claim is not presented within the six-month window, the claimant can apply to the Board and that the board shall grant an application for a late claim where the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim. Reasonable diligence by claimant is required to make such a showing. See *Tsingaris v. State of California* (1979) 91 Cal. App. 3d 312. One of the main purposes of the claim submission deadline is to ensure public entities can timely investigate and attempt to resolve claims. *City of San José v. Sup. Ct.*, 12 Cal.3d 447, 455 (1974). Even if a claimant presents a valid excuse for their untimeliness, the application may still be denied if the delay prevents the public entity from being able to adequately investigate the claim.

Staff recommends that the Board of Directors deny the application for leave to file a late claim. While Valley Water sympathizes with Mr. Nalawagan's distressed mental state, he does not explain how this distress constitutes excusable neglect. Moreover, even if it were excusable neglect, Valley Water now lacks the ability to determine whether any of the damages that allegedly occurred over two years ago. Last, granting Mr. Nalawagan leave to file a late claim could raise equity concerns if the Board were to deny other applications to file a late claim based on similar facts.

If the Board chooses instead to grant the application to file a late claim, staff will investigate to the best of its ability and then either attempt to resolve the claim or recommend its denial on the merits.

ENVIRONMENTAL JUSTICE AND EQUITY IMPACT:

There are no Environmental Justice Impacts associated with this item.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Claim

Attachment 2: Application for Leave to File Late Claim

*Handout 4.9-A: C. De La Cruz

*Handout 4.9-B: D. Dora

UNCLASSIFIED MANAGER:

J. Carlos Orellana, 408-630-2755