



May 12, 2021

Mr. Kris Cook  
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Mr. Peter Prows  
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Proposed Decision to Dismiss Withdrawn Test Claim**

*Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, 17-TC-04*

San Francisco Bay Regional Water Quality Control Board Order No. R2-2017-0014,  
Provision B. 19, effective April 12, 2017  
Santa Clara Valley Water District, Claimant

Dear Mr. Cook and Mr. Prows:

The Proposed Decision for the above-captioned matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, May 28, 2021**, at 10:00 a.m., via Zoom and is proposed for the Consent Calendar.

In response to COVID-19 and its impact on public meetings under the Bagley-Keene Open Meeting Act, Governor Newsom's Executive Order N-29-20 suspends, on an emergency basis pursuant to California Government Code section 8571, certain requirements for public meetings. Accordingly, requiring the physical presence of board members at meetings and providing a physical space for members of the public to observe and participate have been suspended until further notice, so long as the agency makes it possible for members of the public to observe and address the meeting remotely, for example, via web or audio conferencing such as Zoom.

The Commission on State Mandates (Commission) is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters.

**If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial \*9 to use the "Raise Hand" feature.**

There are three options for joining the meeting via Zoom:

1. Through the link below you can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well. **(You are encouraged to use this option.)**

<https://us02web.zoom.us/j/88445915286?pwd=L1JCVjN2K2MwQ0NFWS9acC80Sm03QT09>

Meeting ID: 884 4591 5286

Password: 563783

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2. Through one tap mobile on an iPhone in the U.S. This process will dial everything for you without having to key in the meeting ID number. If you have the Zoom application on your iPhone you can view the meeting and documents being shared as well.

+16699009128,,88445915286#,,, \*563783# or  
+12532158782,,88445915286#,,, \*563783#

3. Through your landline (or non-smart mobile) phone, any number works. You will be able to listen to the proceedings but will not be able to view the meeting or any documents being shared.

+1 669 900 9128 US (San Jose)  
+1 253 215 8782 US (Tacoma)  
+1 346 248 7799 US (Houston)  
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Meeting ID: 884 4591 5286

Password: 563783

During this extraordinary time and as we explore new ways of doing business with new technologies, we ask that you remain patient with us. Please don't hesitate to reach out to us for help with technical problems at [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov) or 916 323-3562.

Please let us know in advance if you oppose having this item placed on consent and wish to testify at the hearing or have a representative testify on your behalf, and if other witnesses will appear. In that case, please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

### **Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,



Heather Halsey  
Executive Director

### ITEM 3

### TEST CLAIM

### PROPOSED DECISION TO DISMISS WITHDRAWN TEST CLAIM

San Francisco Bay Regional Water Quality Control Board Order No. R2-2017-0014,  
Provision B. 19, effective April 12, 2017

*Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley  
Water District and U.S. Army Corps of Engineers,  
Upper Berryessa Creek Flood Risk Management Project*

17-TC-04

Santa Clara Valley Water District, Claimant

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### EXECUTIVE SUMMARY

#### Overview

On March 4, 2021, the Santa Clara Valley Water District (claimant) filed a request to withdraw the *Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, 17-TC-04 Test Claim*.<sup>1</sup>

Section 1187.12 of the Commission's regulations provides, in pertinent part, that a test claim, or portion thereof, may be withdrawn by the claimant upon written application to the executive director any time before a decision is adopted or after enactment of a legislatively determined mandate on the same statute or executive order pursuant to Government Code section 17574. Dismissal of items withdrawn pursuant to this section shall be in accordance with the procedures described in section 1187.14 of these regulations.

Section 1187.14(b) of the Commission's regulations provide that a test claim that has been withdrawn or deemed abandoned may be dismissed by the Commission on its own motion or by a motion of a party after notice and an opportunity to be heard has been provided to the claimant, parties and interested parties as provided below:

(1) For test claims that are withdrawn, deemed abandoned, or filed by an agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution, Commission staff shall serve written notice to initiate dismissal of the test claim to everyone on the mailing list for the matter. The notice shall announce that another local agency or school district may take over the claim by substitution of parties within 60 days of the issuance of the notice.

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<sup>1</sup> Exhibit A, Claimant's Request to Withdraw the Test Claim, filed March 4, 2021.

The notice shall also announce the opportunity to file written comments on the proposed dismissal of the test claim. A copy of the notice shall also be posted on the Commission's website.

(2) Written comments shall be certified, filed, and served in accordance with section 1181.3 of these regulations. If representations of fact are made, they shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of these regulations.

(3) If no other local agency or school district takes over the test claim by substitution of parties within 60 days of the issuance of the notice, the Commission shall hear the proposed dismissal of the test claim.

(4) The hearing on a dismissal of a test claim shall be conducted in accordance with article 7 of these regulations.

On March 5, 2021, the Claimant's Request to Withdraw the Test Claim was served in writing to all interested parties and persons on the mailing list for this Test Claim, and a 60-day notice of this withdrawal and dismissal was provided pursuant to California Code of Regulations, title 2, section 1187.14(b).<sup>2</sup>

The executive order that is the subject of this Test Claim (Order No. R2-2017-0014) applies only to the claimant and the U.S. Army Corps of Engineers.<sup>3</sup> No interested parties objected to the claimant's request for withdrawal, or requested to take over the claim by substitution of the parties, on or before May 4, 2021.

Therefore, the sole issue before the Commission on State Mandates (Commission) is whether the Commission adopts the Proposed Decision, dismissing the above-named Test Claim.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision, dismissing the *Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project*, 17-TC-04 Test Claim.

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<sup>2</sup> Exhibit B, Commission's Notice of Request to Withdraw and Dismiss the Test Claim, Schedule for Comments, and Notice of Hearing Date, issued March 5, 2021.

<sup>3</sup> Exhibit C, Excerpt of the Test Claim, filed April 12, 2018, page 33 (ORDER No. R2-2017-0014, page 1.).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE TEST CLAIM:**

San Francisco Bay Regional Water Quality Control Board Order No. R2-2017-0014, Provision B. 19, effective April 12, 2017  
Filed on April 12, 2018  
Withdrawn on March 4, 2021  
By Santa Clara Valley Water District, Claimant

Case No.: 17-TC-04

*Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project*

DECISION TO DISMISS WITHDRAWN TEST CLAIM PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7, SECTION 1187.14

*(Adopted May 28, 2021)*

**DECISION TO DISMISS WITHDRAWN TEST CLAIM**

The Commission on State Mandates (Commission) adopted this Decision to Dismiss Withdrawn Test Claim by a vote of [vote count will be included in the adopted Decision to Dismiss Withdrawn Test Claim] during a regularly scheduled hearing on May 28, 2021, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

**Summary of the Findings**

On March 4, 2021, the Santa Clara Valley Water District (claimant) filed a request to withdraw the Test Claim *Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project*, 17-TC-04.<sup>4</sup> On March 5, 2021, the claimant's request was served in writing to all interested parties and

<sup>4</sup> Exhibit A, Claimant's Request to Withdraw the Test Claim, filed March 4, 2021.

persons on the mail list for this Test Claim, and a 60-day notice of this withdrawal and dismissal was provided pursuant to California Code of Regulations, title 2, sections 1187.12 and 1187.14(b).<sup>5</sup>

The executive order that is the subject of this Test Claim (Order No. R2-2017-0014) was issued only to the claimant and the U.S. Army Corps of Engineers.<sup>6</sup> No interested parties objected to the claimant's request for withdrawal, or requested to take over the claim by substitution of the parties, on or before May 4, 2021.

### **Conclusion**

IT IS HEREBY ORDERED that the Test Claim filing, *Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project*, 17-TC-04, is dismissed pursuant to California Code of Regulations, title 2, sections 1187.12 and 1187.14.

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<sup>5</sup> Exhibit B, Commission's Notice of Request to Withdraw and Dismiss the Test Claim, Schedule for Comments, and Notice of Hearing Date, issued March 5, 2021.

<sup>6</sup> Exhibit C, Excerpt of the Test Claim, filed April 12, 2018, page 33 (ORDER No. R2-2017-0014, page 1.).

**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 May 12, 2021, I served the:

- **Proposed Decision to Dismiss Withdrawn Test Claim issued May 12, 2021**

*Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project, 17-TC-04*

San Francisco Bay Regional Water Quality Control Board Order No. R2-2017-0014,  
Provision B. 19, effective April 12, 2017

Santa Clara Valley Water District, 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 May 12, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/12/21

**Claim Number:** 17-TC-04

**Matter:** Waste Discharge Requirements and Water Quality Certification for: Santa Clara Valley Water District and U.S. Army Corps of Engineers, Upper Berryessa Creek Flood Risk Management Project

**Claimant:** Santa Clara Valley Water District

### 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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