

Hearing Date: May 28, 2021

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**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**PROPOSED DECISION TO DISMISS WITHDRAWN TEST CLAIM**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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**TABLE OF CONTENTS**

**Exhibit A**

Claimant’s Request to Withdraw the Test Claim ..... 1-8

**Exhibit B**

Commission’s Notice of Request to Withdraw and Dismiss the Test Claim ..... 1-9

**Exhibit C**

Excerpt of the Test Claim..... 1-2



March 1, 2021

**RECEIVED**  
March 04, 2021  
**Commission on  
State Mandates**

Ms. Heather Halsey  
Executive Director, Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Santa Clara Valley Water District Test Claim 17-TC-04  
Request for Withdrawal of Test Claim**

Dear Ms. Halsey,

I am writing on behalf of Claimant Santa Clara Valley Water District (Valley Water) to apply to withdraw the test claim in this matter because Valley Water and the San Francisco Bay Regional Water Quality Control Board have reached a settlement of this matter.

Pursuant to 2 CCR §1181.3(a), I declare under penalty of perjury that the facts stated in this application are true and correct to the best of my personal knowledge, information, or belief.

Very Truly Yours,

SANTA CLARA VALLEY WATER DISTRICT

\_\_\_\_\_  
Rick L. Callender, Esq.  
Chief Executive Officer



**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 March 5, 2021, I served the:

- **Notice of Request to Withdraw and Dismiss the Test Claim, Schedule for Comments, and Notice of Hearing Date issued March 5, 2021**
- **Claimant’s Request to Withdraw the Test Claim filed March 4, 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 March 5, 2021 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/5/21

**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:

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March 5, 2021

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Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118

Mr. Peter Prows  
Briscoe Ivester & Bazel LLP  
155 Sansome Street, 7th Floor  
San Francisco, CA 94104

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**RE: Notice of Request to Withdraw and Dismiss the Test Claim, Schedule for Comments, and Notice of Hearing Date**

*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. Callender and Mr. Prows:

On March 4, 2021, the Commission on State Mandates (Commission) received the Santa Clara Valley Water District's (claimant's) request to withdraw the above-captioned Test Claim.

Specifically, the request states that the claimant and the San Francisco Bay Regional Water Quality Control Board have reached a settlement of this matter.

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. 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.

Mr. Callender and Mr. Prows

March 5, 2021

Page 2

(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.

Therefore, the Commission hereby announces that another local agency or school district may take over the claim by substitution of parties within 60 days of the issuance of this notice.<sup>1</sup> Comments on the proposed dismissal of the above-captioned Test Claim are due no later than **5:00 pm on May 4, 2021**. The dismissal of this matter is set for hearing on **May 28, 2021** and is proposed for the consent calendar.

Sincerely,



Heather Halsey  
Executive Director

---

<sup>1</sup> Commission staff recognizes that there are no potentially eligible claimants to take over this claim, since the order is applicable only to the Santa Clara Valley Water District and U.S. Army Corps of Engineers, but are following the statutory process for dismissal nonetheless.

**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 March 5, 2021, I served the:

- **Notice of Request to Withdraw and Dismiss the Test Claim, Schedule for Comments, and Notice of Hearing Date issued March 5, 2021**
- **Claimant’s Request to Withdraw the Test Claim filed March 4, 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,  
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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 March 5, 2021 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

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**Last Updated:** 3/5/21

**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

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STATE of CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



**TEST CLAIM FORM**

**Section 1**

Proposed Test Claim Title:

San Francisco Bay Regional Water Quality Control Board, Order R2-2017-0014, Provision B. 19

**Section 2**

Local Government (Local Agency/School District) Name:

Santa Clara Valley Water District

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Norma Camacho, Chief Executive Officer

Street Address, City, State, and Zip:

5700 Almaden Expy, San Jose, CA 95118

Telephone Number	Fax Number	Email Address
<u>(408) 265-2600</u>	<u></u>	<u>ncamacho@valleywater.org</u>

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<i>For CSM Use Only</i>	
Filing Date:	<b>RECEIVED</b> April 12, 2018 <i>Commission on State Mandates</i>
Test Claim #:	<b>17-TC-04</b>

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**ORDER No. R2-2017-0014**

**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  
SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:

1. The Santa Clara Valley Water District (District) delivers water and is responsible for flood protection and stream stewardship in Santa Clara County (County). The District is charged with providing local flood protection within five major watersheds in the County, including the 322-square mile Coyote Creek watershed, which drains from the southeastern hills of the County to Lower San Francisco Bay.
2. Berryessa Creek is in the Coyote Creek watershed in the County and drains from the undeveloped Diablo Range hills east of San Jose, through urbanized areas in San Jose and Milpitas, until it discharges to Lower Penitencia Creek, which is tributary to Coyote Creek. Under existing conditions, Berryessa Creek overtops its banks about once every 10 to 20 years in the 2.2-mile-long reach from Calaveras Boulevard in Milpitas upstream to Interstate 680 (I-680) in San Jose (Upper Berryessa Creek) (Attachment A, Figure 1).
3. **Local-Federal Partnership.** The District is partnering with the U.S. Army Corps of Engineers (Corps) for the Upper Berryessa Creek Flood Risk Management Project (Project) to increase flood protection in the surrounding community. Construction of the Project was authorized by Congress in the Water Resources Development Act (WRDA) of 1990, Public Law 101-640, section 101(a)(5). The District and Corps are each funding Project costs and, between the two sponsors, are dividing and/or sharing various roles and responsibilities, such as design, construction, and post-construction operations, in accordance with the Project Partnership Agreement signed by the Corps and District on May 17, 2016. Regarding cost-sharing, the Project Partnership Agreement stipulates that the District will contribute 25 to 50 percent of the total Project cost, in accordance with the WRDA of 1986, Public Law 99-662, as amended (United States Code, title 33, section 2213). The cost-sharing schedule specifically requires the Corps to conduct (and/or oversee) construction contracting and activities and the District to provide all lands, easements, rights-of-way, relocations, and disposal areas (LERRD). The WRDA also requires the Corps to prepare an operations and maintenance manual for the Project (see Finding 16 - Maintenance).

While the WRDA and the Project Partnership Agreement stipulate cost-sharing criteria between the Corps and District, construction management and implementation to the Corps,