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March 15, 2019  
Commission on  
State Mandates

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Refer To File #: 501817-0001

March 15, 2019

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, California 95814

Re: Proposed Decision  
*Central Basin Municipal Water District Governance Reform, 17-TC-02*  
Water Code Sections 71265, 71266, and 71267  
Statutes 2016, Chapter 401 (AB 1794)  
Central Basin Municipal Water District, Claimant  
Agenda Item # 4, Commission Agenda of March 22, 2019

Dear Ms. Halsey:

As the Assistant General Counsel for Central Basin Municipal Water District, I must (1) formally object to the form and content of the proposed decision, and (2) request that the Commission provide for an alternate review of the claim by an unbiased, objective tribunal free of the prejudice resulting from the form and content of the current proposed decision.

The Commission is accurately described as a quasi-judicial body. As such, the Commission has the duty to review the issue before it and apply the law to the facts before it to reach a decision. This is to be done in a totally objective way.

However, the record that has been placed publically before the Commission by referring to issues that the District experienced years ago has irreversibly rendered it impossible for the Commission to perform its function in an objective manner. The report and the proposed decision so infects the ability of individual members of the Commission and the Commission as a whole to render a decision without the prejudice created by the manner in which the report has been submitted.

As a quasi-judicial entity, the Commission should be reviewing (1) the text of the legislation at issue, (2) whether the text of the legislation increases the costs of operations for the public agency claimant, (3) the categories of the expenses claimed by the claimant, and (4) determining the reasonableness of the amounts claimed by the claimant. ***Why*** the text of the statute was adopted and ***how*** any legislator chose to draft the text is irrelevant to the role of the Commission. Whether the inclusion of the extraneous information was intended to prejudice the Commission

is not determinative; the effect of its pervasive inclusion is the same in any case – the reviewing Commission cannot help but be prejudiced in performing its role. It does not matter whether the commission staff intended to prejudice the commission in its decision, the result is the same – the claimant is unfairly described in such an unnecessary negative light that is impossible for the Commission to make the decision in an unbiased and objective manner.

For example, the third paragraph of the executive summary of the proposed decision refers to the years old history of the district before the legislation that is the focus of the issue. Twenty-one of the first 43 footnotes in the proposed decision refers to the State Audit by its scathing title. Of the 108 footnotes in the proposed decision, only appellate opinion citations (35) outnumber the references to the State Audit. The Constitution is the source of only 9 footnotes. Statutes serve as the source of only 7 footnotes, only a third of the number of references to the State Audit.

Accordingly, the claimant, acting on behalf of the 1.6 million residents in 24 cities and unincorporated portions of southeast Los Angeles County, is being deprived of its due process rights and the rights of the residents in the District's service area. The District respectfully suggests that the only manner in which this issue may now be processed in light of such prejudice is to have those questions answered by a completely unbiased tribunal, shielded from the "why" and the "how" of the decision to enact the legislation. We request that the Commission delegate the answering of the critical questions to an Administrative Law Judge or a panel of three such judges at the State Office of Administrative Hearings where they will be presented the questions necessary to be answered without the prejudicial comments or historical references. If nothing else, social justice demands that the households served by the district where 2016 average income ranged as low as \$34,738 in comparison to the County average in 2016 of \$61,338 be treated to the same impartial review as any other district would receive; those households should not be given short shrift by way of a prejudiced decision regarding their service provider.

Further, in addressing the merits of the claim, whether the District is authorized to raise funds from a source other than property taxes should not be a determining factor. After all, the expenditure of funds by the District to comply with the statute will result in payments to the District in one form or another by the ultimate consumers – whether in water rates, property taxes, or fees imposed – there is still the cost to the consuming residents of the cost of the District's operations. It is fortuitous that the District being singled out for this additional operational cost on an ongoing basis does not receive property taxes per se, although it does collect some sums on the property tax bills. The consumers of the District's water should be treated equally with districts that do receive property taxes if the state adopts legislation that increases its costs and the district has no option but to comply with the legislation.

The key to the issue is the interpretation of Proposition 4. The Commission views the law as a unified scheme in that the Commission views the appropriations limit and the state subvention for the costs to be a single issue. However, that view is not supported by the language which leads to the conclusion that there are two separate and distinguishable issues –one being

the appropriations limit and the other being the obligation to reimburse the local unit of government for the costs of complying with the mandate. The second does not depend on the existence of the first, despite the position taken by the Commission.

A proper reading of the Constitution grants subvention for all local governments to properly carry out state-mandates. Before the Court of Appeal granted rehearing in *Paradise Irrigation District v. Commission on State Mandates*, Case No. C081929, in footnote 6 the Court stated that it was declining to address issues associated with the Gann limit and the exclusion of enterprise water districts from reimbursement for mandates because the issues had not been raised at the trial court level. This test claim may very well present those issues to a trial court along with any issues of fundamental fairness and due process that may be raised if the Commission does not delegate this decision to an objective tribunal as requested above.

Article XIIB, section 6 states: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse the local government for costs of the program or increased level of service." Nothing in this provision requires the use of property taxes as a precondition to receiving reimbursement. AB 1794 mandated a new program by requiring the selection and seating of three addition directors from the water purveyors in the district.

Similarly, Government Code section 17500 et. seq. under Chapter 1459 Statutes of 1984, in implementing the claim and reimbursement process, fails to contain any reference to a requirement that the local agency which has increased expenses as a result of a legislative mandate must be a recipient of property taxes to qualify for reimbursement from the state for the resulting costs.

And, in any event, in enacting AB 1794, section 2 provides for reimbursement for the increased costs to the district without any reference – explicitly or implicitly – to a precondition of the district receiving property taxes. The legislative history is quite clear that the Legislature was aware of past Commission decisions and past and present court challenges, but the resulting language was knowingly included in the bill as enacted. The Legislature is presumed to be aware of existing laws at the time a new statute is enacted. The Legislature also clearly knows how to draft legislation which is contingent any conditions or reconditions; AB 1794 does contain any such conditions. Later enactments prevail over earlier enactments, and specific enactments prevail over general enactments. All of these arguments can be presented more fully to the independent tribunal to whom the Commission should delegate the quasi-judicial review in the interests of fundamental fairness.

We look forward to being advised of the Commission's decisions.

Very truly yours,

A handwritten signature in cursive script that reads "Lloyd W. Pellman".

Lloyd W. Pellman  
Nossaman LLP

LWP:ls



# Central Basin Service Area

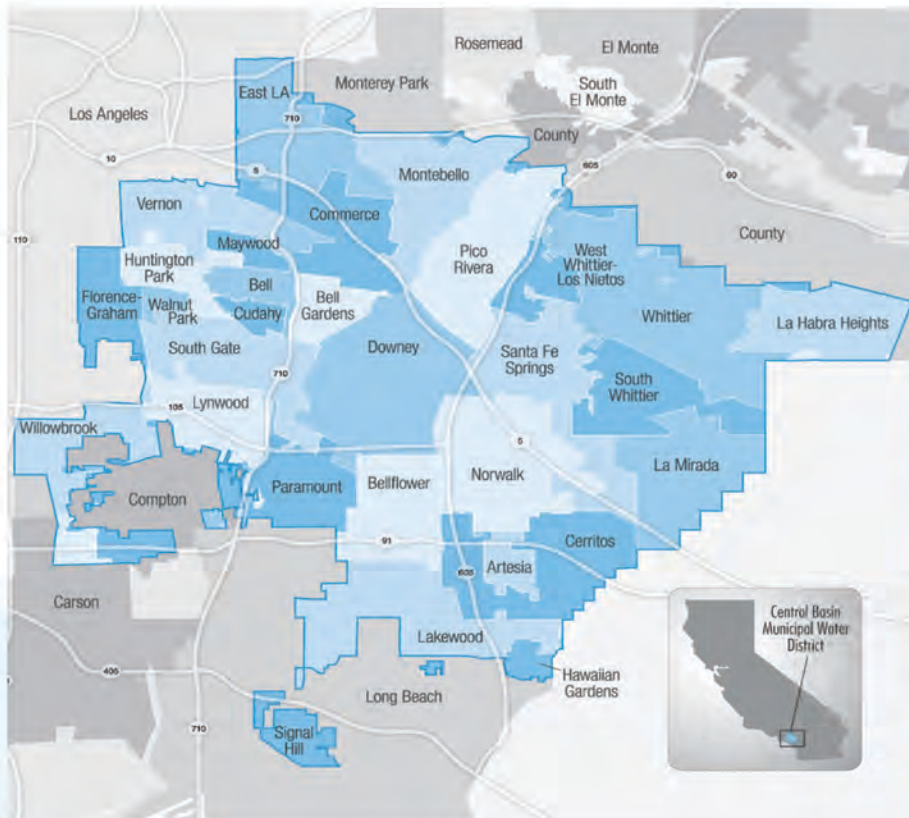


Central Basin Municipal Water District, 6252 Telegraph Road Commerce, CA 90040  
(323) 201-5500

Central Basin serves a 227 square mile radius with a population of 1.6 million people living within 24 cities in southeast Los Angeles County as well as unincorporated county areas. Central Basin has a diverse socio-economic population. Throughout our community, the median income varies widely, ranging from \$110,329 in La Habra Heights to \$34,738 in Florence-Firestone Graham (source: 2016 Census). With such a diverse service area, the District is met with the opportunity to serve a community with a variety of needs and interests.

Cities	Median Household Income
Artesia	\$58,561
*Bell	\$38,823
*Bellflower	\$50,704
**Bell Gardens	\$37,183
Cerritos	\$95,373
*Commerce	\$42,235
*Compton	\$45,406
*Cudahy	\$39,058
Downey	\$65,332
*East Los Angeles	\$41,193
**Florence-Graham	\$34,738
**Hawaiian Gardens	\$36,026
**Huntington Park	\$35,629
La Habra Heights	\$110,329
Lakewood	\$82,175
La Mirada	\$81,956
*Lynwood	\$43,848
**Maywood	\$36,696
*Montebello	\$47,518
Norwalk	\$61,050
*Paramount	\$46,364
Pico Rivera	\$57,203
Signal Hill	\$70,286
*South Gate	\$45,522
South Whittier	\$62,799
*Vernon	\$38,333
*Walnut Park	\$43,500
West Whittier-Los Nietos	\$64,943
**Willowbrook	\$38,070
Whittier	\$67,431

\*Disadvantaged city \*\*Severely disadvantaged city



**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.

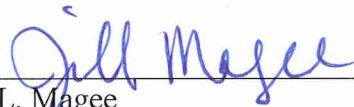
On March 15, 2019, I served the:

- **Claimant's Late Comments on the Proposed Decision filed March 15, 2019**

*Central Basin Municipal Water District Governance Reform, 17-TC-02*  
Water Code Sections 71265, 71266, and 71267;  
Statutes 2016, Chapter 401 (AB 1794)  
Central Basin Municipal 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 15, 2019 at Sacramento, California.



Jill L. Magee  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/27/19

**Claim Number:** 17-TC-02

**Matter:** Central Basin Municipal Water District Governance Reform

**Claimant:** Central Basin Municipal 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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