

February 22, 2022

Mr. Peter Prows  
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235 Montgomery Street,  
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San Francisco, CA 94104

Ms. Michelle Reimers  
Turlock Irrigation District  
333 E. Canal Drive  
Turlock, CA 95380

Mr. Bill Schwandt  
Modesto Irrigation District  
1231 11th Street  
Modesto, CA 95354

**Re: Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim**

*Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, 21-TC-02*

Dear Mr. Prows, Ms. Reimers, and Mr. Schwandt:

On January 14, 2022, the Turlock Irrigation District and the Modesto Irrigation District (claimants) filed a Test Claim with the Commission on State Mandates (Commission) on the above-named matter.

Upon review, Commission staff rejects this Test Claim pursuant to Commission regulation section 1183.1(a) because neither Turlock Irrigation District nor Modesto Irrigation District are local governments subject to the tax and spend limitations of the California Constitution, and therefore they are not eligible for mandate subvention under article XIII B, section 6 of the California Constitution.

Section 1183.1(g) provides that “any test claim, or portion of a test claim, that the Commission lacks jurisdiction to hear for any reason... may be rejected or dismissed by the executive director with a written notice stating the reason therefor. However, for an otherwise timely and complete test claim over which the Commission would have jurisdiction, except that it was filed by a local 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, the Commission shall follow the process outlined in section 1187.14(b).”

Commission regulations in section 1187.14(b)(1) provides a process for a test claim 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, to be taken over by an eligible agency subject to the alleged mandate by a substitution of parties and provides an opportunity to file comments on the proposed dismissal of the test claim:

- (1) For test claims that are withdrawn, deemed abandoned, or filed by an agency that is not eligible to seek reimbursement because it is not subject to the taxing and spending limitations of article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.

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Because the alleged mandate is applicable only to Turlock Irrigation District and Modesto Irrigation District, it will not be possible for another agency to take over the claim.

### **How To File Comments on the Proposed Dismissal of the Test Claim**

Parties, interested parties, and interested persons receiving this letter may file comments on the proposed dismissal of this Test Claim not later than **5:00 p.m. on April 25, 2022**, in accordance with sections 1183.2 and 1181.3 of the Commission's regulations.

Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code Regs., tit. 2 §§ 1183.2, § 1187.14, and 1187.5.) If representations of fact are made, they must be supported with documentary evidence filed with the comments on the test claim. (Cal. Code Regs., tit. 2 §§ 1183.2, § 1187.14, and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup> Hearsay evidence (such as declarations not based on personal knowledge but on information and belief alone) may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.<sup>2</sup>

The dismissal of this matter is tentatively set for hearing on **May 27, 2022** and will be proposed for the consent calendar.

### **Process for Filing Comments**

The Commission's regulations require that written materials filed with the Commission be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.php> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon prior approval of a written request to the executive director. (Cal. Code Regs., tit. 2, 1181.3(c)(2).)

As provided in the Commission's regulations, a real party in interest may appeal to the Commission for review of the actions and decisions of the executive director. Please refer to California Code of Regulations, title 2, section 1181.1(c).

Sincerely,



Heather Halsey  
Executive Director

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

<sup>2</sup> Title 2, California Code of Regulations, section 1187.5.

**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 February 22, 2022, I served the:

- **Notice of Opportunity to File Written Comments on Proposed Dismissal of Test Claim issued February 22, 2022**
- **Test Claim filed by the Turlock Irrigation District and the Modesto Irrigation District on January 14, 2022**

*Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District – Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, 21-TC-02*

Turlock Irrigation District and Modesto Irrigation District, Claimants

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 February 22, 2022 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/18/22

**Claim Number:** 21-TC-02

**Matter:** Floodplain Restoration Condition (no. 12) of Water Quality Certification for Turlock Irrigation District and Modesto Irrigation District - Don Pedro Hydroelectric Project and La Grange Hydroelectric Project

**Claimants:** Modesto Irrigation District  
Turlock Irrigation 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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