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Commission on
State Mandates

LATE FILING

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9 July 2022

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Subject: Additional Authority re: Joint Test Claim 21-TC-02

Dear Commissioners:

Staff have posted an Updated Proposed Decision, but it continues to miss the issue that this test claim is governed by Propositions 218 and 26—and now also fails to cite a new case on Propositions 218 and 26 that strongly supports Claimants, *City of San Buenaventura v. United Water Conservation District* (May 26, 2022) 79 Cal.App.5th 110.

City of San Buenaventura followed from the remand of another Propositions 218 and 26 case by the California Supreme Court—which the Updated Proposed Decision also does not cite. (*City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191.) The Supreme Court directed the Court of Appeal to consider whether a local agency met its burden to show that a “groundwater extraction charge” was not actually a tax under Propositions 218 and 26 because it bore “a fair or reasonable relationship to the payor’s burdens on, or the benefits received from, the governmental activity”. (79 Cal.App.5th at 114, citing Cal. Const., art. XIII C § 1(e).) Applying the independent judgment test, the Court of Appeal held that the charge failed that constitutional test and thus was a tax. (*Id.* at 120-121.)

The Updated Proposed Decision does not identify any way for Claimants to pay for the Mandate that would not require raising taxes as defined by Propositions 218 and 26. The Updated Proposed Decision mentions Proposition 218 only once, in an unconvincing paragraph on page 35, and ignores Proposition 26 altogether. The Updated Proposed Decision would dismiss the Test Claim by essentially just ignoring the real issue.

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The project required by the Mandate at issue could *only* be funded by taxes as defined by Propositions 218 and 26, because, as the Test Claim explained (Section 5 at 14), the Mandate is *not* at all intended to benefit the Claimants' ratepayers. Because the Mandate at issue here is not intended benefit Claimants' ratepayers, but to provide benefits to areas entirely outside their boundaries, it could only be funded through fees that Propositions 218 and 26 would deem taxes. Article XIII B § 6 would apply to such taxes and requires reimbursement for the costs. The Test Claim should proceed to adjudication on the merits without further delay.

Sincerely,

BRISCOE IVESTER & BAZEL LLP

/s/ Peter Prows

Peter Prows
Claimants' Representative

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 July 13, 2022, I served the:

- **Claimant's Late Comments filed July 11, 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

Water Quality Certification for Federal Permit or License, Turlock Irrigation District and Modesto Irrigation District Don Pedro Hydroelectric Project and La Grange Hydroelectric Project, Federal Energy Regulatory Commission Project Nos. 2299 and 14581, Condition 12, Riparian, Spawning, and Floodplain Management, Adopted by the State Water Resources Control Board on January 15, 2021
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 July 13, 2022 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/13/22

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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