

April 30, 2018

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

Response to Test Claim 17-TC-02, Central Basin Municipal Water District

Dear Ms. Halsey:

The Department of Finance has reviewed the test claim submitted to the Commission on State Mandates (Commission) by the Central Basin Municipal Water District (District) that alleges reimbursable, state-mandated costs associated with Chapter 401, Statutes of 2016 (AB 1794). The district appears to be formed via a discretionary petition process, an initial basis for deeming the claimant ineligible for mandate reimbursement.

The District was audited by the California State Auditor (Auditor) in 2015. In its audit report, the Auditor said of the District's board of directors that "the board's poor leadership and decision making significantly impeded the district's ability to effectively and efficiently perform its necessary functions..." The Auditor also stated "...the Legislature should pass special legislation to preserve the district as an independent entity but modify the district's governance structure."

Policymakers enacted AB 1794 in response to the audit report. AB 1794 expanded the District's board of directors from five to eight members on January 1, 2017, with the three new members appointed by the water purveyors served by the District. The board of directors will be reduced to seven members on November 8, 2022, when one of the five elected positions is eliminated.

The District asserts it incurred \$217,948.07 in reimbursable costs to implement AB 1794. The costs fall into the following general categories:

- Expanding the board room dais to accommodate three additional board members.
- Project management to oversee building improvements.
- Executive leadership to conduct the appointment of three additional board members.
- Legal support related to implementing AB 1794.
- Convening meetings with water purveyors related to appointment of the three additional board members.
- District staff time and expenses related to conducting appointment of the three additional board members.
- Travel, administrative, and office expenses related to three additional board members.

Before reviewing the test claim in detail, we note the District is ineligible to file a test claim. The Commission should therefore deny the test claim.

State Controller's Office reports, Los Angeles County Auditor-Controller reports, and the District's own budget all show the District receives no tax revenue. The District's budget is financed entirely by water service fees and various other non-tax revenues. There is no evidence the district received or used proceeds of taxes to pay for the alleged mandated activities.

The State Constitution requires the state to reimburse certain costs it imposes on local agencies because Article XIII B, section 6, limits the ability of local agencies to increase taxes and to expend tax proceeds. Local agencies that are funded entirely by fees and other non-tax revenue are ineligible to be reimbursed for state-mandated costs. There is no evidence the district is subject to the taxing and spending limitations of Article XIII B, section 6.

Furthermore, even if the District were an eligible claimant, the activities it allegedly performed pursuant to AB 1794 do not qualify for reimbursement.

For the costs associated with a statute to be state-reimbursable, the statute must either create a new program unique to government in which local agencies are compelled to participate, or must require local agencies to provide a higher level of service via a new or an existing program (*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 878). In *City of Richmond v. Commission on State Mandates* (1998) 64 Cal. App. 4th 1190, the court stated that "(a) higher cost to the local government for compensating its employees is not the same as a higher cost of providing services *to the public* (emphasis added)." This supports the contention that, to be state-reimbursable, the higher level of service in question must be associated with a service provided to the public.

By the District's own acknowledgement, the activities it claims to have performed in relation to AB 1794 are not a state-reimbursable program. On page 11 of the written narrative that accompanies the test claim, the District states in paragraph (F) that "(i)mplementation of the statute does not increase water quality or water supply, *nor does the statute provide for a new or enhanced level of service for which customers may be charged* (emphasis added)."

We agree with the District that AB 1794 does not require it to provide a higher level of service to the public (in this case, the customers) via a new or an existing program.

Expanding on the above point, increasing the board of directors' membership does not represent a new program. The board of directors is an existing entity to which AB 1794 added three members. Nor, as the District acknowledges, does adding three new members represent the provision of a higher level of service to the public via a new or an existing program.

We also note the activities the District allegedly performed are not required by a plain reading of the statute. AB 1794 adds three members to the board of directors, establishes eligibility criteria for the new members, states who shall appoint the new members, and specifies the reimbursement, compensation, and benefits for which the new members are eligible. However, the District allegedly undertook a host of activities that are clearly not required by AB 1794, and for which it now seeks reimbursement. These include, but are not limited to:

- \$25,363 to expand the board room dais to accommodate three new members.
- \$3,100 to upgrade and restripe the parking lot to add three new parking spaces.
- \$3,785 to "refinish entire Board Room Dais to accommodate continuity and functionality."

- \$6,760.50 for audio visual updates and structural improvements, including adding marble to the board member dais and installing braces to keep the dais from sagging.
- \$1,623.23 for “lunch meetings between the District and water purveyors regarding the implementation of AB 1794 and the process...for...nominations...of additional board members.”
- \$1,175.00 for “director’s registration and dues.”
- \$750.05 for “director’s housing and accommodations.”
- \$211.68 to photograph and create picture prints of the new board members.
- \$411.53 to provide meals at the installation ceremony for the new board members.
- \$73.76 for director’s meals.
- \$26,344.08 for the District General Manager to plan, direct, coordinate, and monitor the implementation of AB 1794.
- \$32,835 for “legal support to assist the staff in facilitating and conducting the election.” However, AB 1794 only requires the District General Manager to provide water purveyors with a 60-day period to submit nominations for the three new board members (Water Code section 71267 (a)), and to collect the water purveyors’ votes and report the results (Water Code section 71267 (c) (3)).
- \$101,688.50 for the District to defend against two legal challenges that sought to prevent the implementation of AB 1794. The statute imposes no affirmative duty on the District to perform these tasks.

In summary, the District is not an eligible test claimant, and the Commission should reject the test claim on that basis alone. Furthermore, AB 1794 does not require the District to provide a new program or a higher level of service to the public. Finally, the costs the District allegedly incurred are for activities not required by a plain reading of the statute.

Sincerely,



ERIKA LI
Program Budget Manager

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 April 27, 2018, I served the:

- **Department of Finance's (Finance's) Comments on the Test Claim filed April 27, 2018**

Central Basin Municipal Water District Governance Reform, 17-TC-02
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 April 27, 2018 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/13/18

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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