Hearing Date: May 24, 2024
J:\MANDATES\2010\TC\10-TC-07 SARWQCB Order No. R8-2010-0033\Ps&Gs\TOC.docx

ITEM 4

PROPOSED DECISION AND PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV.A-C; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3, Adopted January 29, 2010

10-TC-07

Period of reimbursement from January 29, 2010 through December 31, 2017

TABLE OF CONTENTS

Exhibit A

Test Claim Decision 1-348

Exhibit B

Draft Expedited Parameters and Guidelines 1-29

Exhibit C

Controller's Comments on the Draft Expedited Parameters and Guidelines 1-16

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit A

March 26, 2024

Mr. David Burhenn
Burhenn & Gest, LLP
12401 Wilshire Blvd, Suite 200
Los Angeles, CA 90025

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

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

Re: Decision
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F.1; XIII.F.2; XII.G.1; XII.H; XII.K.4; XII.K.5; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3,[1] Adopted January 29, 2010
County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, Claimants

Dear Mr. Burhenn and Mr. Hill:

On March 22, 2024, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Sincerely,

Juliana Gmur
Acting Executive Director

[1] Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption have been properly pled.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F.1; XII.F.2; XII.G.1; XII.H; XII.K.4; XII.K.5; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3[1] Adopted January 29, 2010 Filed on January 31, 2011 and Revised March 28, 2017 County of Riverside, Riverside County Flood Control and Water Conservation District, Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto, Claimants	Case No.: 10-TC-07 *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 22, 2024*) (*Served March 26, 2024*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on March 22, 2024.

Juliana Gmur, Acting Executive Director

[1] Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption have been properly pled.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F.1; XII.F.2; XII.G.1; XII.H; XII.K.4; XII.K.5; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3[1] Adopted January 29, 2010 Filed on January 31, 2011 and Revised March 28, 2017 County of Riverside, Riverside County Flood Control and Water Conservation District, Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto, Claimants	Case No.: 10-TC-07 *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 22, 2024*) (*Served March 26, 2024)*

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on March 22, 2024. David Burhenn appeared on behalf of the claimants. Donna Ferebee appeared on behalf of the Department of Finance. Catherine Hagan and Jennifer Fordyce appeared on behalf of the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board (Water Boards).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

[1] Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption have been properly pled.

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 6-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Deborah Gallegos, Representative of the State Controller	Yes
Jennifer Holman, Representative of the Director of the Office of Planning and Research	Yes
Renee Nash, School District Board Member	Yes
William Pahland, Representative of the State Treasurer, Vice Chairperson	Yes
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes

Summary of the Findings

This Test Claim, which was timely filed, alleges reimbursable costs mandated by the state for the County of Riverside, Riverside County Flood Control and Water Conservation District (District), and the Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris and San Jacinto (claimants), to comply with conditions of the National Pollutant Discharge Elimination System Program (NPDES) permit, Order No. R8-2010-0033 (test claim permit) issued by the California Regional Water Quality Control Board, Santa Ana Region (Regional Board).

The claimants have properly pled the following sections of the test claim permit pursuant to Government Code section 17553, alleging these sections impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution:

1. Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VII.D.3, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A (Local Implementation Plans)
2. Section VIII.C (Known Pathogen and Bacterial Source Ordinances)
3. Sections IX.D, IX.E, IX.H, and Appendix 3, Section III.E.3 (Illicit Discharges and Illegal Connections Program)
4. Section X.D (Septic System Database)
5. Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 (Commercial and Residential Facilities Inspections)
6. Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F, XII.G.1, and XII.K.4-5 (New Development and Significant Redevelopment Projects)
7. Section XII.B (Watershed Action Plan)
8. Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 (Formal Employee Training)

9. Section XVII.A.3 (Urban Runoff Management Program Effectiveness Assessment)[2]

The Commission finds that some of the sections of the test claim permit pled by the claimants impose a state-mandated new program or higher level of service, and others do not.

Local Implementation Plans. Section IV of the test claim permit requires the permittees to develop and revise a Local Implementation Plan (LIP) template and jurisdiction-specific individual LIPs, and Sections VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A require the permittees to include specific information in their individual LIPs. Neither federal law nor the prior permit required the permittees to develop individual, jurisdiction-specific plans for implementing their urban runoff management programs or to develop a template for creating those plans. The Commission finds that the requirements to develop and revise a LIP template and jurisdiction-specific LIPs in accordance with Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A are new and constitute state-mandated new programs or higher levels of service. The Commission further finds that the requirement in Section VII.D.3, to implement revised LIPs in accordance with the approved modified BMP implementation schedule, is not new and thus, does not impose a new program or higher level of service.[3]

Known Pathogen and Bacterial Source Ordinances. Section VIII.C of the test claim permit requires the co-permittees to promulgate and implement ordinances to control known pathogen or bacterial indicator sources, such as animal wastes, if necessary.[4] The co-permittees were already required under prior law to implement ordinances to prevent illicit non-stormwater discharges to the MS4, to evaluate the effectiveness of their current ordinances in prohibiting illicit, non-stormwater discharges, including animal waste, and to examine the source of pollutants in urban runoff and implement control measures to protect beneficial uses and attain water quality objectives, which included the control of coliform bacteria.[5] The Commission finds that the requirements in Section VIII.C, to promulgate and implement ordinances that would control known pathogen or bacterial indicator sources such as animal wastes, if necessary, are not new and therefore Section VIII.C does not mandate a new program or higher level of service.

---

[2] Exhibit A, Test Claim, filed January 31, 2011. Note that this Test Claim was filed on January 31, 2011 and revised March 28, 2017.

[3] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)), 381 (Order No. R8-2002-0011, Section III.D.4), 413 (Order No. R8-2002-0011, Section XV.A).

[4] Exhibit A, Test Claim, filed January 31, 2011, page 196 (test claim permit, Section VIII.C).

[5] United States Code, title 33, section 1342(a)(2) (Public Law 100-4); Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B)(1), 122.43(a); Exhibit A, Test Claim, filed January 31, 2011, pages 368, 372, 383-384 (Order No. R8-2002-0011).

Illicit Discharges and Illegal Connections Program. Sections IX.D, IX.E, IX.H, and Appendix 3, Section III.E.3 of the test claim permit pertain to revisions to the illicit discharges and illegal connections (IC/ID) program. Section IX.D requires the permittees to review and revise their IC/ID program within 18 months of the adoption of the test claim permit to include a proactive illicit discharge detection and elimination program using specified guidance and to report the results of that review in the annual report. While the prior permit required the permittees to annually review and evaluate the effectiveness of their stormwater ordinances and enforcement practices in prohibiting IC/IDs to the MS4s; the control measures established under the IC/ID program and the Drainage Area Management Plan; and monitoring programs, including IC/ID reconnaissance strategies, the permittees were not previously required to undertake a separate, one-time review and revision of the IC/ID program for the specific purpose of developing a proactive IDDE program *using* the Center for Watershed Protection's Guidance Manual or an equivalent program. Likewise, the requirement to report the result of the review of their IDDE program in the annual report is a new, one-time requirement.

Section IX.E sets forth a list of five activities that must be included in the IDDE program element of the revised IC/ID program – the minimum activities comprising the "proactive IDDE program" referenced in Section IX.D ("a pro-active IDDE…consistent with Section IX.E")[6] but does not independently require the permittees to review and revise their IC/ID programs. Furthermore, the claimants had to perform these five activities under prior law.[7] Thus, these requirements do not mandate a new program or higher level of service.

Section IX.H requires the permittees to maintain a database summarizing IC/ID incident response and to annually report on IC/ID incident response. While the prior permit required the permittees to develop a database of IC/ID enforcement actions, it did not require the permittees to maintain a database of IC/IDs incident responses unless the

[6] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[7] Code of Federal Regulations, title 40, sections 122.26(d)(1)(iii), 122.26(d)(1)(iv)(D), 122.26(d)(2)(iv)(B).; Exhibit A, Test Claim, filed January 31, 2011, pages 384-385 (Order No. R8-2002-0011, Sections VI.A, IV.B, IV.C), 407 (Order No. R8-2002-0011, Section X), 409-410 (Order No. R8-2002-0011, Sections XI.G, XI.H), 415 (Order No. R8-2002-0011, Section XVI.A), 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.1.c), 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C); Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, pages 3-39; Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

incident resulted in an enforcement action.[8] Thus, the requirement to maintain a database of IC/IDs incident responses, *except* those that resulted in an enforcement action, is new and mandates a new program or higher level of service. However, both federal law and the prior permit required the permittees to annually report IC/ID incident response data.[9]

Appendix 3, Section III.E.3 requires the permittees to review and update IC/ID reconnaissance strategies using the same guidance specified in Section IX.D and to establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring location.[10] While the prior permit required the permittees to "review and update their reconnaissance strategies to identify and prohibit illicit discharges" as a component of IC/ID monitoring, it did not require the "review and update" to be conducted *for the specific purpose* of aligning the IC/ID reconnaissance strategies with the proactive IDDE principles set forth in the Guidance Manual or its equivalent.[11] In addition, the requirement to use existing monitoring data for nitrogen and total dissolved solids at core monitoring stations to establish dry weather flow concentrations for those constituents is new, and mandates a new program or higher level of service. However, monitoring for those constituents was required by prior law and is not new.[12]

Septic System Database. Section X.D. of the test claim permit requires the County of Riverside, through its Department of Environmental Health, to create and maintain a database of new septic systems in the permittees' jurisdictions approved since 2008.[13] While federal law requires the permittees to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4, it does not specify what

---

[8] Exhibit A, Test Claim, filed January 31, 2011, pages 384 (Order No. R8-2002-0011, Sections VI.A, VI.B), 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[9] Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B); 122.42(c)(4), (6); Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[10] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E.3).

[11] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[12] Code of Federal Regulations, title 40, sections 122.26(d)(1)(iv)(D), 122.26(d)(1)(v), (d)(2)(iv)(B); Exhibit A, Test Claim, filed January 31, 2011, pages 366 (Order No. R8-2002-0011, Finding 17), 384 (Order No. R8-2002-0011, Section VI.A), 423 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section I.G). 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C).

[13] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

procedures must be used.[14] The prior permit required the District to collaborate with local sewering agencies to develop a unified response procedure to respond to sewage spills, including spills from septic tanks, and required permittees with 50 or more septic systems in their jurisdiction to identify a procedure to control septic system failures and to address such failures, but did not require the County to maintain a database of septic systems throughout the County.[15] The Commission finds that the requirement in Section X.D of the test claim for the County to maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008 is new and mandates a new program or higher level of service.

Commercial and Residential Facilities Inspections. Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 of the test claim permit pertain to municipal inspections of commercial and residential facilities. Section XI.D.1 requires the co-permittees to identify commercial facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities and determine if these facilities warrant additional inspection to protect water quality.[16] Under the prior permit, the permittees were required to inspect commercial facilities;[17] to develop an inventory of commercial facilities;[18] to prioritize and specify their inspection frequency based on their potential for, or history of, unauthorized, non-stormwater discharges;[19] and to enforce their stormwater ordinances prohibiting nonexempt non-storm water discharges at commercial facilities.[20] However, commercial facilities handling pre-production plastic pellets and managed turf facilities are not among the commercial facilities or businesses the prior permit specifically required the permittees to inventory or evaluate.

Section XI.D.6 requires each co-permittee to notify all mobile businesses based or discovered operating within the jurisdiction regarding minimum source control and pollution prevention BMPS applicable to mobile businesses.[21] The permittees were

[14] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(4).

[15] Exhibit A, Test Claim, filed January 31, 2011, pages 385-386 (Order No. R8-2002-0011, Sections VII.A and VII.B).

[16] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

[17] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011).

[18] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

[19] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011).

[20] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011).

[21] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit).

already required by the prior permit to provide mobile businesses with information about minimum source control and pollution prevention BMPs.[22]

Section XI.D.7 requires the co-permittees to develop an enforcement strategy to address mobile businesses.[23] While the prior permit required the co-permittees to: prioritize inspections of mobile businesses based upon threat to water quality; inspect them pursuant to the Enforcement/Compliance Strategy; enforce local ordinances against mobile businesses; and document compliance and inspection efforts, including any enforcement actions taken,[24] there was no separate requirement to develop an enforcement strategy specifically targeting mobile businesses.

Section XI.E.6 requires each co-permittee to include an evaluation of its residential program in the annual report.[25] While the prior permit did not expressly identify a "residential program," the permittees were required by federal law and the prior permit to develop and implement a program to reduce the discharge of pollutants from residential activities to the MS4, to maintain adequate legal authority to enact and enforce ordinances prohibiting and controlling *all* illicit non-stormwater discharges to the MS4s, including those from residential activities, and to submit an annual report to the Regional Board on all components of the stormwater program.[26]

The Commission finds the requirements in Sections XI.D.1 and XI.D.7, to identify facilities that transport, store, or transfer pre-production plastic pellets and managed turf facilities and determine if these facilities warrant additional inspection, and to develop a mobile business enforcement strategy within 24 months of adoption of the test claim permit, respectively, are new and impose a state-mandated new program or higher level of service. The Commission further finds the requirements in Sections XI.D.6 and XI.E.6, pertaining to municipal inspections of commercial and residential facilities, are

[22] Exhibit A, Test Claim, filed January 31, 2011, pages 403, 405 (Order No. R8-2002-0011); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

[23] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit).

[24] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011).

[25] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.6).

[26] United States Code, title 33, section 1342(p)(3)(B)(ii), (iii) (Public Law 100-4); Code of Federal Regulations, title 40, section 122.2; Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(A), 122.26(d)(2)(iv)(B), 122.26(d)(2)(i), 122.26(d)(2)(v). 122.42(c); Exhibit A, Test Claim, filed January 31, 2011, pages 364, 374, 377, 379-382, 385, 408, 427-428 (Order No. R8-2002-0011), 463 (Order No. R8-2002-0011, Fact Sheet); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 8, 23, 42-43.

not new and therefore do not impose a state-mandated new program or higher level of service.[27]

New Development and Significant Redevelopment Projects. The claimants pled Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 of the test claim permit pertaining to regulating stormwater discharges from new development and significant redevelopment projects.[28] The prior permit imposed requirements with respect to new development and significant redevelopment, and defined those projects, and, thus, some of these requirements are not new.[29] However, with respect to the new project categories and projects that meet the reduced threshold criteria, the requirements are likely new.

The Commission finds that there is no need to specifically determine which activities are new because the costs incurred by a municipality as a project proponent of a new development or significant redevelopment project to comply with the requirements in Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit are not mandated by the state. Furthermore, the requirements imposed on the permittees to comply with Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 of the test claim permit, as a project proponent of a municipal new development or significant development project, are not unique to government and do not provide a peculiarly governmental service to the public. The same requirements are imposed on all defined new development and significant redevelopment projects and therefore do not impose a new program or higher level of service. The Commission also finds, as stated below, that the activities required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 that pertain to the claimants' *regulation* of development projects other than those proposed by the permittees do not result in costs mandated by the state pursuant to Government Code section 17556(d) because

[27] United States Code, title 33, section 1342(p)(3)(B)(ii), (iii) (Public Law 100-4); Code of Federal Regulations, title 40, section 122.2; Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(A), 122.26(d)(2)(iv)(B), 122.26(d)(2)(i), 122.26(d)(2)(v). 122.42(c); Exhibit A, Test Claim, filed January 31, 2011, pages Exhibit A, Test Claim, filed January 31, 2011, pages 364, 374, 377, 379-382, 385, 403, 405, 408, 427-428 (Order No. R8-2002-0011), 463 (Order No. R8-2002-0011, Appendix 6 [Fact Sheet]); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 8, 23, 36-37, 42-43.

[28] Exhibit A, Test Claim, filed January 31, 2011, pages 46-54 (Test Claim narrative), 208, 211, 213, 217-223, 225-226 (test claim permit, Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F, XII.G.1, and XII.K.4-5).

[29] Exhibit A, Test Claim, filed January 31, 2011, pages 386, 390-391 (Order No. R8-2002-0011).

the claimants have regulatory fee authority sufficient as a matter of law to pay for the alleged new state-mandated activities.[30]

Watershed Action Plan. The claimants have pled Section XII.B of the test claim permit, which requires the permittees to develop and implement a Watershed Action Plan.[31] The Watershed Action Plan is an integrated plan for managing a watershed that considers water quality, hydromodification, water supply and habitat protection.[32] The requirements in Section XII.B, pertaining to the development and implementation of a Watershed Action Plan are new. Neither federal law nor the prior permit required the permittees to develop and implement an urban runoff management program on a watershed basis, or to perform the individual activities comprising the Watershed Action Plan. The Commission finds that the requirements in Section XII.B of the test claim permit, to develop and implement a Watershed Action Plan, impose a state-mandated new programs or higher levels of service.

Formal Employee Training. Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 require the permittees to provide formal training for permittee staff responsible for implementing the requirements of the test claim order relating to project-specific Water Quality Management Plan (WQMP) review on a number of topics, including review and approval of project-specific WQMPs and the CEQA requirements contained in Section XII.C of the test claim permit.[33] Federal law requires stormwater management programs to include "a description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system,"[34] and requires educational and training measures for construction site operators, but does not specify training for permittee staff.[35] Under the prior permit, only inspection staff received training on the WQMP, and such training was limited to compliance with the WQMP during project construction and post-construction implementation and maintenance of appropriate BMPs at industrial and commercial facilities.[36] The Commission finds that providing formal training to those permittee staff responsible for review and approval of project-specific WQMPS, as

---

[30] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[31] Exhibit A, Test Claim, filed January 31, 2011, pages 46, 47-49, 57, 58 (Test Claim narrative), 209-211 (test claim permit, Section XII.B).

[32] Exhibit A, Test Claim, filed January 31, 2011, pages 209-211 (test claim permit, Sections XII.B.1 through XII.B.10), 294 (test claim permit, Appendix 4 [Glossary]).

[33] Exhibit A, Test Claim, filed January 31, 2011, pages 232-233 (test claim permit, Sections XV.C, XV.F.1, XV.F.4, and XV.F.5).

[34] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A).

[35] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(D).

[36] Exhibit A, Test Claim, filed January 31, 2011, pages 402 (Order No. R8-2002-0011, Section IX.B.11), 406 (Order No. R8-2002-0011, Section IX.C.13).

specified in Sections XV.C, XV.F.1, XV.F.4, and XV.F.5, is new and mandates a new program or higher level of service.

Urban Runoff Management Program Effectiveness Assessment. The claimants allege that Section XVII.A.3 requires the permittees to develop and include in the first annual report a *proposal* for assessing the effectiveness of the urban runoff management program that uses specific criteria and guidance developed by the California Storm Water Quality Association (CASQA), and to use the proposal when performing the annual effectiveness assessment – in other words, to implement it.[37]

Federal law requires the permittees to assess the controls that comprise their urban runoff management programs and to annually report on the status of implementing the program components.[38] It does not specify how the assessment must be conducted (i.e., the metrics, methods, or measures to be used). While the prior permit required the permittees to evaluate the effectiveness of their urban runoff management programs,[39] based on "quantitative, but indirect methods" of assessment, as well as water quality data,[40] the ROWD makes clear that the program effectiveness assessment under the prior permit did not yet include "specific… requirements for all effectiveness assessment metrics," i.e., measuring program effectiveness using targeted outcome levels.[41] Nor did the prior permit specify effectiveness assessment outcome levels akin to the six levels defined in the test claim permit.

The Commission finds that the requirements in Section XVII.A.3, to develop and include in the first annual report a proposal to assess the effectiveness of the urban runoff management program using specific guidance developed by the California Storm Water Quality Association (CASQA), are new and thus, impose a new program or higher level of service. The Commission further finds that Section XVII.A.3 does not require the permittees to use the proposal when annually evaluating the effectiveness of the urban runoff management program.

To be reimbursable, the mandated activities must result in increased costs mandated by the state, forcing local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[42] In addition,

---

[37] Exhibit A, Test Claim, filed January 31, 2011, pages 61 (Test Claim narrative), 235 (test claim permit, Section XVII.A.3).

[38] Code of Federal Regulations, title 40, sections 122.26(d)(2)(v), 122.42(c).

[39] Exhibit A, Test Claim, filed January 31, 2011, pages 382 (Order No. R8-2002-0011, Section IV.B), 412 (Order No. R8-2002-0011, Sections XIII.A, XIII.C), 427-428 (Order No. R8-2002-0011, Appendix 3, Sections IV.B.2, IV.B.3, IV.B.8).

[40] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 47-48.

[41] Exhibit N (22), Excerpts from Santa Ana River Region, Report of Waste Discharge, April 2007, page 4.

[42] California Constitution, article XIII B, section 6; Government Code sections 17514, 17561(a); *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th

a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim. Government Code section 17556(d) states that the Commission shall not find costs mandated by the state when "[t]he local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

The Commission finds that:

1. The new state-mandated activities do not result in costs mandated by the state for Riverside County Flood and Water Conservation District because there is no evidence in the record that the District was forced to spend its "proceeds of taxes," but instead used assessment revenue and contract funds from the County and cities, which are not subject to the District's appropriations limit.
2. There is substantial evidence in the record that the County and cities incurred costs exceeding $1,000 and used proceeds of taxes to comply with the test claim permit. Declarations filed by the County and cities show that they have incurred shared costs and individual direct costs exceeding the $1,000 threshold to comply with the test claim permit, and there is no evidence in the record to rebut this finding.[43]
3. Pursuant to Government Code section 17556(d), the County and cities have regulatory fee authority sufficient as a matter of law to fund the new state-mandated activities related to commercial facilities inspections (Sections XI.D.1 and XI.D.7) and the required activities related to new development and redevelopment projects including LID and hydromodification management (Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4, XII.E.6-9, XII.F.1, XII.F.2, and XII.G.1), and structural post-construction BMP tracking (Sections XII.K.4 and

---

1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[43] Exhibit A, Test Claim, filed January 31, 2011, pages 83-84 (Declaration from City of Beaumont employee, stating that the only funding source available is the City's General Fund revenues), 89-90 (Declaration from City of Corona employee, discussing use of County Service Area 152 funds and General Fund revenues), 96 (Declaration from City of Hemet employee, discussing use of "sewer and storm drain fee" to pay for some but not all of test claim permit activities and General Fund revenues), 101-102 (Declaration from City of Lake Elsinore employee, discussing use of County Service Area 152 funds and General Fund revenues), 108 (Declaration from City of Moreno Valley employee, discussing use of County Service Area 152 funding, funds collected from new developments pursuant to an NPDES rate schedule, and General Revenue funds), 114-115 (Declaration from City of Perris employee, discussing use of City's General Fund revenues), 120-121 (Declaration from City of San Jacinto employee, discussing use of County Service Area 152 funds, Landscape and Lighting Park District fees, and General Fund revenues).

XII.K.5) and, thus, there are no costs mandated by the state for these activities.[44] However, the County and Cities do not have regulatory fee authority to pay for the Watershed Action Plan (Section XII.B).

4. The County and cities have constitutional and statutory authority to charge property-related fees for the new state-mandated requirements related to Local Implementation Plans (Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A); the proactive illicit discharge detection and elimination program (Sections IX.D, IX.E, IX.H, and Appendix 3, Section III.E.3); the septic system database (Section X.D); the Watershed Action Plan (Section XII.B); employee training (Sections XV.C, XV.F.1, and XV.F.4, and XV.F.5), and urban runoff management program assessment (Section XVII.A.3).[45]

   However, from January 29, 2010 (the beginning of the reimbursement period) to December 31, 2017, these fees are subject to the voter approval requirement in article XIII D, section 6(c) and therefore the fee authority is not sufficient as a matter of law to fund the costs of the mandated activities.[46] Under these limited circumstances, Government Code section 17556(d) does not apply, and there are costs mandated by the state.[47]

   On or after January 1, 2018, there are no costs mandated by the state to comply with these activities because the claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover

---

[44] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[45] California Constitution, article XI, section 7; Government Code sections 37101 ("The legislative body may license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city") and 66001 (fees for development of real property); Health and Safety Code section 5471 (fees for storm drainage maintenance and operation); Government Code sections 38902 (providing for sewer standby charges); 53750 et seq. (Proposition 218 Omnibus Implementation Act, describing procedures for adoption of assessments, fees and charges); 53751 (as amended in 2017, providing that fees for sewer services includes storm sewers).

[46] See *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, and *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581.

[47] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581; Government Code sections 57350 and 57351 (SB 231, eff. January 1, 2018, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351); *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

the costs of the mandated activities within the meaning of Government Code section 17556(d).[48]

The Commission partially approves this Test Claim for the county and city co-permittees only,[49] and finds that the new state-mandated activities listed in the Conclusion impose a reimbursable state-mandated program from January 29, 2010, the beginning date of the period of reimbursement, to December 31, 2017. Reimbursement is denied beginning January 1, 2018, because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d) and, thus, there are no costs mandated by the state.[50]

In addition, reimbursement for these mandated activities from any source, including but not limited to, state and federal funds, any service charge, fees, or assessments to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes, shall be identified and deducted from any claim submitted for reimbursement.

This Test Claim is denied for the Riverside County Flood Control and Water Conservation District because there is no evidence that the District incurred costs mandated by the state from its proceeds of taxes.

All other activities and sections of the test claim permit and costs pled by the claimants and costs claimed are denied.

Table of Contents

I. Chronology 17
II. Background 19
A. History of the Federal Regulation of Municipal Stormwater 19

[48] See *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174; Government Code sections 57350 and 57351 (which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351).

[49] On June 7, 2013, Order No. R8-2013-0024 amended the test claim permit to make three changes to the list of permittees: (1) remove Murrieta and Wildomar; (2); add the Cities of Eastvale and Jurupa Valley and (3) add all portions of the City of Menifee. The Cities of Murrieta and Wildomar are eligible claimants whose potential period of reimbursement ends June 6, 2013. The Cities of Eastvale and Jurupa Valley are not permittees under the test claim permit and are therefore not eligible to claim reimbursement. The City of Menifee's eligibility for reimbursement under the test claim permit is unaffected by the permit amendment. Exhibit N (1), California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013.

[50] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581; Government Code sections 57350 and 57351 (SB 231, eff. January 1, 2018, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351); *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

B. Key Definitions 24
1. Water Quality Standards 24
2. Total Maximum Daily Loads (TMDLs). 25
3. Municipal Separate Storm Sewer System (MS4) 27
4. Best Management Practices (BMPs) 27
C. Specific Federal Legal Provisions Relating to Stormwater Pollution Prevention 27
1. Federal Antidegradation Policy 27
2. Requirement to Effectively Prohibit Non-Stormwater Discharges 28
3. Standard Setting for Dischargers of Pollutants: NPDES Permits 28
4. The Federal Toxics Rules (40 CFR 131.36 and 131.38) 29
5. National Toxics Rule (NTR) 29
6. The California Toxics Rule (CTR) 29
D. The California Water Pollution Control Program 30
1. Porter-Cologne 30
2. California's Antidegradation Policy (State Water Resources Control Board Resolution No. 68-16 adopted October 24, 1968) 34
3. Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004 35
4. Statewide Plans: The Ocean Plan, the California Inland Surface Waters Plan (ISWP), and the Enclosed Bays and Estuaries Plan (EBEP) 35
5. Basin Plans (also known as Water Quality Control Plans) 37
E. History of the Test Claim Permit, Order No. R8-2010-0033 37
III. Positions of the Parties 40
A. County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto 40
B. Department of Finance 42
C. Water Boards 43
IV. Discussion 45
A. The Commission Has Jurisdiction Over This Test Claim. 47
1. The Test Claim Was Timely Filed and Has a Potential Period of Reimbursement Beginning January 29, 2010. 47
2. Based on a Later Adopted Order Amending the Test Claim Permit, the Cities of Murrieta and Wildomar Are Eligible Claimants Under the Test Claim Permit Only

Up to and Including June 6, 2013, But the Cities of Eastvale and Jurupa Valley Are Not Eligible Claimants Under the Test Claim Permit. 47

3. The Claimants Are Not Required to Exhaust Administrative Remedies with the State Water Board Prior to Filing a Test Claim with the Commission. 49

4. The Regional Board's General Argument That the Permit Provisions Were Proposed by the Claimants in Their ROWD and Are Therefore Discretionary, Is Not Correct as a Matter of Law. 51

B. Some of the Permit Provisions Impose a State-Mandated New Program or Higher Level of Service. 52

1. The Requirements in Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the Test Claim Permit, to Develop and Revise a Local Implementation Plan Template and Jurisdiction-Specific Local Implementation Plans, Impose a State-Mandated New Program or Higher Level of Service. However, the Requirement in Section VII.D.3, to Implement Revised LIPs in Accordance with the Approved Modified BMP Implementation Schedule, Does Not Mandate a New Program or Higher Level of Service. 52

2. The Requirements in Section VIII.C of the Test Claim Permit, to Promulgate and Implement Pathogen and Bacterial Source Ordinances, Do Not Impose Any New Requirements and Therefore, Section VIII.C. Does Not Mandate a New Program or Higher Level of Service. 79

3. The Requirements in Sections IX.D, IX.H, and Appendix 3, Section III.E.3 of the Test Claim Permit, to Review and Revise the Illegal Connections and Illicit Discharges (IC/ID) Program to Include a Proactive Illicit Discharge Detection and Elimination Program Using Specified Guidance and to Report the Results in the Annual Report; to Review and Update IC/ID Reconnaissance Strategies Using the Same Specified Guidance; to Maintain a Database of IC/ID Incident Response, Except Those Resulting in Enforcement Actions; and to Establish a Baseline Dry Weather Flow Concentration for TDS and TIN at Each Core Monitoring Location, Impose a State-Mandated New Program or Higher Level of Service. However, the Requirements in Section IX.E, to Perform the Five Specified IDDE Activities, and Section IX.H, to Annually Report on IC/ID Incident Response, Are Not New and Do Not Mandate a New Program or Higher Level of Service. 92

4. The Requirement in Section X.D. of the Test Claim Permit, for the County of Riverside to Maintain a Database of Septic Systems Approved in the Permittees' Jurisdictions Since 2008, Imposes a State-Mandated New Program or Higher Level of Service. 141

5. The Requirements in Sections XI.D.1 and XI.D.7 of the Test Claim Permit, to Identify Facilities that Transport, Store, or Transfer Pre-Production Plastic Pellets and Managed Turf Facilities and Determine if Additional Inspection Is Warranted, and to Develop a Mobile Business Enforcement Strategy, Respectively, Impose a State-Mandated New Program or Higher Level of Service. However, the Remaining Requirements in Section XI.D.6 and XI.E.6, Pertaining to Municipal

Inspections of Mobile Businesses and Residential Facilities, Are Not New and Do Not Impose a New Program or Higher Level of Service. 148

6. The Requirements Imposed by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1 and XII.K.5 of the Test Claim Permit on a Municipality as a Project Proponent of a New Development or Significant Redevelopment Project Are Triggered by Local Decisions, Are Not Mandated by the State, and Most Do Not Impose a New Program or Higher Level of Service. In Addition, and as Discussed in Section IV.C of this Decision, even if Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 of the Test Claim Permit Impose New Regulatory Requirements, Which May Mandate a New Program or Higher Level of Service, the Regulatory Requirements Do Not Result in Costs Mandated by the State Because the Claimants Have Fee Authority Sufficient as a Matter of Law to Pay for These Costs Pursuant to Government Code Section 17556(d). 184

7. The Requirements in Section XII.B of the Test Claim Permit, to Develop and Implement a Watershed Action Plan, Impose a State-Mandated New Program or Higher Level of Service. 208

8. The Requirements in Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 of the Test Claim Permit, to Provide Formal Training to Permittee Staff Responsible for Reviewing and Approving Project-Specific Water Quality Management Plans (WQMPs), Including on the CEQA Requirements Contained in Section XII.C of the Test Claim Permit, Impose a State-Mandated New Program or Higher Level of Service. 217

9. The Requirements in Section XVII.A.3 of the Test Claim Permit, to Develop and Include in the First Annual Report a Proposal to Assess the Effectiveness of the Urban Runoff Management Program Using Specific Guidance Developed by the California Storm Water Quality Association (CASQA), Imposes a State-Mandated New Program or Higher Level of Service. However, Section XVII.A.3 Does Not Require the Permittees to Implement the Proposal When Annually Evaluating the Effectiveness of the Urban Runoff Management Program. 240

C. The Test Claim Permit Imposes Costs Mandated by the State for the County and Cities for Those New State-Mandated Activities Not Subject to Government Code Section 17556(d), from January 29, 2010, to December 31, 2017. There Are No Costs Mandated by the State for Riverside County Flood and Water Conservation District Because There Is No Evidence in the Record that the District Was Forced to Spend Their Local "Proceeds of Taxes." 257

1. The New State-Mandated Activities Do Not Result in Costs Mandated by the State for Riverside County Flood and Water Conservation District Because There Is No Evidence in the Record That the District Was Forced to Spend Its Local "Proceeds of Taxes." 272

2. There is Substantial Evidence in the Record that the County and Cities Used Proceeds of Taxes to Comply with the Test Claim Permit. 282

3. The Courts Have Held There Are *No* Costs Mandated by the State Pursuant to Government Code Section 17556(d) When Local Government Has the Authority to Charge Regulatory Fees Pursuant to Article XIII C or Property-Related Fees that Are Subject Only to the Voter Protest Provisions of Article XIII D, Section 6 of the California Constitution. However, Government Code Section 17556(d) Does Not Apply When Proposition 218 Requires Voter Approval to Impose Property-Related Stormwater Fees and Thus, Under These Circumstances, There Are Costs Mandated by the State. 285

V. Conclusion 325

COMMISSION FINDINGS

I. Chronology

01/29/2010	The California Regional Water Quality Control Board, Santa Ana Region (Regional Board) issued the test claim permit, Order No. R8-2010-0033.[51]
01/31/2011	The claimants filed the joint Test Claim.[52]
03/17/2011, 06/17/2011	The Regional Board requested two extensions of time to file comments, which were granted for good cause.
08/26/2011	The Department of Finance (Finance) filed comments on the Test Claim.[53]
08/26/2011	The Regional Board filed comments on the Test Claim.[54]
09/14/2011-02/07/2012	The claimants requested three extensions of time to file rebuttal comments, which were granted for good cause.
04/19/2012	The claimants requested the Test Claim be put on inactive status due to pending litigation, which was approved on April 27, 2012.
02/08/2017	Commission staff issued Notice of Incomplete Joint Test Claim Filing.
02/10/2017	The claimants filed comments on the Notice of Incomplete Joint Test Claim Filing.
02/23/2017	The claimants requested an extension of time to respond to the Notice of Incomplete Joint Test Claim Filing, which was approved on February 24, 2017.
03/28/2017	The claimants filed a response to the Notice of Incomplete Joint Test

[51] Exhibit A, Test Claim, filed January 31, 2011, page 125 (test claim permit).

[52] Exhibit A, Test Claim, filed January 31, 2011.

[53] Exhibit B, Finance's Comments on the Test Claim, filed August 26, 2011.

[54] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011.

	Claim Filing.
04/07/2017	Commission staff issued Notice of Complete Joint Test Claim Filing, Removal from Inactive Status and Claimants' Rebuttal, Renaming of Matter, Request for Briefing, Request for Administrative Record, and Notice of Tentative Hearing Date.[55]
04/11/2017	The claimants requested an extension of time to file rebuttal comments, which was approved on April 13, 2017.
04/17/2017	The Water Boards requested an extension of time to file rebuttal comments, which was approved on April 19, 2017.
05/31/2017	The claimants, Finance, Regional Board, and the California State Association of Counties (CSAC) filed responses to the Request for Briefing.[56]
06/01/2017	The Regional Board filed the Administrative Record.
06/22/2017-07/21/2017	The claimants requested two extensions of time to file rebuttal comments, which were approved.
08/02/2017	The claimants filed rebuttal comments.[57]
11/17/2023	Commission staff issued the Draft Proposed Decision.[58]
11/30/2023	The claimants requested an extension of time to file comments on the Draft Proposed Decision and a postponement of hearing to March 22, 2024, which was approved for good cause.
12/04/2023	The Water Boards and Finance requested extensions of time to file comments on the Draft Proposed Decision, which were approved.
12/22/2023	The claimants requested an additional one-day extension of time to file comments on the Draft Proposed Decision, which was approved.
01/02/2024	The Water Boards requested an additional one-day extension of time to file comments on the Draft Proposed Decision, which was approved.
01/03/2024	The claimants and the Water Boards requested an additional one-week extension of time to file comments on the Draft Proposed Decision,

[55] Exhibit D, Notice of Complete Joint Test Claim Filing, Removal from Inactive Status and Claimants' Rebuttal, Renaming of Matter, Request for Briefing, Request for Administrative Record, and Notice of Tentative Hearing Date, issued April 7, 2017.

[56] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017; Exhibit F, California State Association of Counties' Supplemental Brief, filed May 31, 2017; Exhibit G, Finance's Supplemental Brief, filed May 31, 2017; Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017.

[57] Exhibit I, Claimants' Rebuttal Comments, filed August 2, 2017.

[58] Exhibit J, Draft Proposed Decision, issued November 17, 2023.

which were approved.

01/05/2024 The claimants and Finance file comments on the Draft Proposed Decision.[59]

01/11/2024 The Water Boards filed comments on the Draft Proposed Decision.[60]

II. Background

A. History of the Federal Regulation of Municipal Stormwater

The law commonly known today as the Clean Water Act (CWA) is the result of major amendments to the Federal Water Pollution Control Act enacted in 1977. The history that follows details the evolution of the federal law and implementing regulations which are applicable to the case at hand. The bottom line is that CWA's stated goal is to *eliminate* the discharge of pollutants into the nation's waters by 1985.[61] "*This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act.*"[62] The CWA utilizes a permit program that was established in 1972, the National Pollutant Discharge Elimination System (NPDES), as the primary means of enforcing the Act's effluent limitations. As will be made apparent by the following history, the goal of eliminating the discharge of pollutants into the nation's waters was still far from being achieved as of 2010, when the test claim permit was issued, and the enforcement, rather than being strict, has taken an iterative approach, at least with respect to municipal stormwater dischargers.

Regulation of water pollution in the United States finds its beginnings in the Rivers and Harbors Appropriation Act of 1899, which made it unlawful to throw or discharge "any refuse matter of any kind or description…into any navigable water of the United States, or into any tributary of any navigable water."[63] This prohibition survives in the current United States Code today, qualified by more recent provisions of law that authorize the issuance of discharge permits with specified restrictions to ensure that such discharges will not degrade water quality or cause or contribute to the violation of any water quality standards set for the water body by the United States Environmental Protection Agency (U.S. EPA) or by states on behalf of U.S. EPA.[64]

---

[59] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024; Exhibit L, Finance's Comments on the Draft Proposed Decision, filed January 5, 2024.

[60] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024.

[61] United States Code, title 33, section 1251(a)(1).

[62] *Natural Res. Def. Council v. Costle* (D.C.Cir. 1977) 568 F.2d 1369, 1371, emphasis added.

[63] United States Code, title 33, section 401 (Mar. 3, 1899, c. 425, § 13, 30 Stat. 1152).

[64] See United States Code, title 33, sections 1311-1342 (CWA 301(a) and 402); Code of Federal Regulations, title 40, section 131.12.

In 1948, the federal Water Pollution Control Act "adopted principles of State-Federal cooperative program development, limited federal enforcement authority, and limited federal financial assistance."[65] Pursuant to further amendments to the Act made in 1965, "States were directed to develop water quality standards establishing water quality goals for interstate waters." However, the purely water quality-based approach "lacked enforceable Federal mandates and standards, and a strong impetus to implement plans for water quality improvement. The result was an incomplete program that in Congress' view needed strengthening."[66]

Up until 1972, many states had "water quality standards" that attempted to limit pollutant concentrations in their lakes, rivers, streams, wetlands, and coastal waters. Yet the lack of efficient and effective monitoring and assessment tools and the sheer difficulty in identifying pollutant sources resulted in a cumbersome, slow, ineffective system that was unable to reverse growing pollution levels in the nation's waters. In 1972, after earlier state and federal laws failed to sufficiently improve water quality, and rivers that were literally on fire provoked public outcry, the Congress passed the Federal Water Pollution Control Act Amendments, restructuring the authority for water pollution control to regulate individual point source dischargers and generally prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge was authorized by a NPDES permit. The 1972 amendments also consolidated authority in the Administrator of U.S. EPA.

In 1973, U.S. EPA adopted regulations to implement the Act which provided exclusions for several types of discharges including "uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity" and have not been identified "as a significant contributor of pollution."[67] This particular exclusion applied only to municipal separate storm sewer systems (MS4s). As a result, as point source pollutant loads were addressed effectively by hundreds of new treatment plants, the problem with polluted runoff (i.e., both nonpoint source pollution and stormwater discharges) became more evident.

However, in 1977 the Court in *Natural Resources Defense Council v. Costle* held that the U.S. EPA had no authority to exempt point source discharges, including stormwater discharges from MS4s, from the requirements of the Act and that to do so contravened

---

[65] Exhibit N (8), Excerpt from U.S. EPA, Advanced Notice of Proposed Rule Making, (Federal Register / Vol. 63, No. 129 / July 7, 1998 / Proposed Rules), https://www.gpo.gov/fdsys/pkg/FR-1998-07-07/pdf/98-17513.pdf (accessed on September 12, 2022), page 2.

[66] Exhibit N (8), Excerpt from U.S. EPA, Advanced Notice of Proposed Rule Making, (Federal Register / Vol. 63, No. 129 / July 7, 1998 / Proposed Rules), https://www.gpo.gov/fdsys/pkg/FR-1998-07-07/pdf/98-17513.pdf (accessed on September 12, 2022), page 2.

[67] Code of Federal Regulations, title 40, sections 124.5 and 124.11 (30 FR 18003, July 5, 1973).

the Legislature's intent.[68] The Act prohibits "the discharge of any pollutant by any person" without an NPDES permit.[69] The term "discharge of a pollutant" means "any addition of any pollutant to navigable waters from *any* point source."[70] A "point source" is any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.[71] Thus, when an MS4 discharges stormwater contaminated with pollutants from a pipe, ditch, channel, gutter or other conveyance, it is a point source discharger subject to the requirements of the CWA to obtain and comply with an NPDES permit or else be found in violation of the CWA.

Stormwater runoff "…is generated from rain and snowmelt events that flow over land or impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground."[72] Polluted stormwater runoff is commonly transported through MS4s, and then often discharged, untreated, into local water bodies.[73] As the Ninth Circuit Court of Appeal has stated:

> Storm water runoff is one of the most significant sources of water pollution in the nation, at times "comparable to, if not greater than, contamination from industrial and sewage sources." [Citation omitted.] Storm sewer waters carry suspended metals, sediments, algae-promoting nutrients (nitrogen and phosphorus), floatable trash, used motor oil, raw sewage, pesticides, and other toxic contaminants into streams, rivers, lakes, and estuaries across the United States. [Citation omitted.] In 1985, three-quarters of the States cited urban storm water runoff as a major cause of waterbody impairment, and forty percent reported construction site runoff as a major cause of impairment. Urban runoff has been named as the foremost cause of impairment of surveyed ocean waters. Among the sources of storm water contamination are urban development, industrial

---

[68] *Natural Res. Def. Council v. Costle* (D.C.Cir. 1977) 568 F.2d 1369, 1379 (holding unlawful EPA's exemption of stormwater discharges from NPDES permitting requirements).

[69] United States Code, title 33, section 1311(a).

[70] United States Code, title 33, section 1362(12)(A), emphasis added.

[71] United States Code, title 33, section 1362(14).

[72] See United States Code, title 33, section 122.26(b)(13) and Exhibit N (30), U.S. EPA, NPDES Stormwater Program, Problems with Stormwater Pollution, https://www.gpo.gov/fdsys/pkg/FR-1998-07-07/pdf/98-17513.pdf (accessed on September 13, 2022).

[73] Exhibit N (32), U.S. EPA, NPDES Stormwater Program, Stormwater Discharges from Municipal Sources, https://www.epa.gov/npdes/stormwater-discharges-municipal-sources (accessed on September 13, 2022).

facilities, construction sites, and illicit discharges and connections to storm sewer systems.[74]

Major amendments to the Federal Water Pollution Control Act were enacted in the federal Clean Water Act of 1977, and the federal act is now commonly referred to as the Clean Water Act (CWA). CWA's stated goal is to eliminate the discharge of pollutants into the nation's waters by 1985.[75] "This goal is to be achieved through the enforcement of the strict timetables and technology-based effluent limitations established by the Act."[76]

MS4s are thus established point sources subject to the CWA's NPDES permitting requirements.[77]

In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted CWA section 402(p), codified at United States Code, title 33, section 1342(p), "Municipal and Industrial Stormwater Discharges." Sections 1342(p)(2) and (3) require NPDES permits for stormwater discharges "associated with industrial activity," discharges from large and medium-sized municipal storm sewer systems, and certain other discharges. Section 402(p)(4) sets out a timetable for promulgation of the first of a two-phase overall program of stormwater regulation with the first permits to issue by not later than 1991 or 1993, depending on the size of the population served by the MS4.[78]

Generally, NPDES permits issued under the CWA must "contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health."[79] A NPDES permit specifies "an acceptable level of a pollutant or pollutant parameter in a discharge." [80]

---

[74] *Environmental Defense Center, Inc. v. EPA* (9th Cir. 2003) 344 F.3d 832, 840-841 (citing *Natural Res. Def. Council v. U.S. EPA* (9th Cir. 1992) 966 F.2d 1292, 1295, and Regulation for Revision of the Water Pollution Control Program Addressing Storm Water (64 Fed.Reg. 68722, 68724, 68727 (December 8, 1999) codified at Code of Federal Regulations, title 40, parts 9, 122, 123, 124)).

[75] United States Code, title 33, section 1251(a)(1).

[76] *Natural Res. Def. Council v. Costle* (D.C.Cir. 1977) 568 F.2d 1369, 1371.

[77] *Natural Res. Def. Council v. Costle* (D.C.Cir. 1977) 568 F.2d 1369, 1379 (holding unlawful EPA's exemption of stormwater discharges from NPDES permitting requirements); *Natural Res. Def. Council v. U.S. EPA* (9th Cir. 1992) 966 F.2d 1292, 1295-1298.

[78] United States Code, title 33, section 1342(p)(2)-(4); *Natural Res. Def. Council v. U.S. EPA* (9th Cir. 1992) 966 F.2d 1292, 1296.

[79] Exhibit N (31), U.S. EPA, NPDES Permit Basics, https://www.epa.gov/npdes/npdes-permit-basics (accessed on September 13, 2022).

[80] Exhibit N (31), U.S. EPA, NPDES Permit Basics, https://www.epa.gov/npdes/npdes-permit-basics (accessed on September 13, 2022).

With regard to MS4s specifically, the 1987 amendments require control technologies that reduce pollutant discharges to the maximum extent practicable (MEP), including best management practices (BMPs), control techniques and system design and engineering methods, and such other provisions as the Administrator[81] deems appropriate for the control of such pollutants.[82] A statutory anti-backsliding requirement was also added to preserve present pollution control levels achieved by dischargers by prohibiting the adoption of less stringent effluent limitations[83] than those already contained in their discharge permits, except in certain narrowly defined circumstances.[84]

The United States Supreme Court has observed the cooperative nature of water quality regulation under the CWA as follows:

> The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Toward this end, the Act provides for two sets of water quality measures. "Effluent limitations" are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. (See §§ 1311, 1314.) "[W]ater quality standards" are, in general, promulgated by the States and establish the desired condition of a waterway. (See § 1313.) These standards supplement effluent limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels." (*EPA v. California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 205, n. 12, 96 S.Ct. 2022, 2025, n. 12, 48 L.Ed.2d 578 (1976).)[85]

The CWA thus employs two primary mechanisms for controlling water pollution: identification and standard-setting for bodies of water (i.e. 303(d) listings of impaired water bodies and the setting of water quality standards), and identification and regulation of dischargers (i.e. the inclusion of effluent limitations consistent with water

---

[81] Defined in United States Code, title 33, section 1251(d) (section 101(d) of the CWA) as the Administrator of the U. S. Environmental Protection Agency.

[82] United States Code, title 33, section 1342(p)(3). This is in contrast to the "best available technology" standard that applies to the treatment of industrial discharges. See United States Code, title 33, section 1311(b)(2)(A).

[83] The Senate and Conference Reports from the 99th Congress state that these additions were intended to "clarify the Clean Water Act's prohibition of backsliding on effluent limitations." See H.R. Conf. Rep. No. 99-1004 (1986), emphasis added; see also S. Rep. No. 99-50, 45 (1985).

[84] United States Code, title 33, section 1342(o); see Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 99-1004, 153 (1986).

[85] *Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101-102.

quality standards in NPDES permits).

In 1990, pursuant to CWA section 1342, U.S. EPA issued the "Phase I Rule" regulating large and medium MS4s. The Phase I Rule and later amendments thereto, in addition to generally applicable provisions of the CWA and its implementing regulations and other state and federal environmental laws, apply to the permit at issue in this Test Claim.

B. Key Definitions

1. Water Quality Standards

A "water quality standard" defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses.[86] The term "water quality standard applicable to such waters" and "applicable water quality standards" refer to those water quality standards established under section 303 of the CWA, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements which may be adopted by the federal or state government and may be found in a variety of places including but not limited to Code of Federal Regulations, title 40, sections 131.36, 131.38, and California state adopted water quality control plans and basin plans.[87] A TMDL is a regulatory term in the CWA, describing a plan for restoring impaired waters that identifies the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards. Federal law requires the states to adopt an anti-degradation policy which at minimum protects existing uses and requires that existing high quality waters be maintained to the maximum extent possible unless certain findings are made.[88]

The water quality criteria can be expressed in narrative form, which are broad statements of desirable water quality goals, or in a numeric form, which identifies specific pollutant concentrations.[89] When water quality criteria are met, water quality will generally protect the designated use.[90] Federal regulations state the purpose of a water quality standard as follows:

> A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in sections 101(a)(2) and 303(c) of the

[86] Code of Federal Regulations, title 40, part 131.2.

[87] Code of Federal Regulations, title 40, part 130.7(b)(3).

[88] Code of Federal Regulations, title 40, part 131.12.

[89] *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1403.

[90] Code of Federal Regulations, title 40, section 131.3(b).

> Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.[91]

With respect to standard-setting for bodies of water, section 1313(a) of the United States Code provides that existing water quality standards may remain in effect unless the standards are not consistent with the CWA, and that the Administrator "shall promptly prepare and publish" water quality standards for any waters for which a state fails to submit water quality standards, or for which the standards are not consistent with the CWA.[92] In addition, states are required to hold public hearings from time to time but "at least once each three year period" for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards:

> Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the [U.S. EPA] Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.[93]

In general, if a body of water is identified as impaired under section 303(d) of the CWA, it is necessarily exceeding one or more of the relevant water quality standards.[94]

2. Total Maximum Daily Loads (TMDLs).

Section 303(d) of the CWA, codified at United States Code, title 33, section 1313(d), requires that each state "identify those waters within its boundaries for which the effluent limitations…are not stringent enough to implement any water quality standard

---

[91] Code of Federal Regulations, title 40, section 131.2.

[92] United States Code, title 33, section 1313(a). Note that section 1313 was last amended by 114 Stat. 870, effective Oct. 10, 2000.

[93] United States Code, title 33, section 1313(c)(2)(A), effective October 10, 2000.

[94] See United States Code, title 33, section 1313(d)(1)(A) (codifying CWA § 303(d) and stating: "Each State shall identify [as impaired] those waters within its boundaries for which the effluent limitations … are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters").

applicable to such waters." The identification of waters not meeting water quality standards is called an "impairment" finding, and the priority ranking is known as the "303(d) list."[95] The state is required by the Act to "establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters."[96]

After the waters are ranked, federal law requires that "TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS [water quality standards] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters."[97] A TMDL is defined as the sum of the amount of a pollutant allocated to *all point sources* (*i.e.*, the sum of all waste load allocations, or WLAs), plus the amount of a pollutant allocated for nonpoint sources and natural background. A TMDL is essentially a plan setting forth the amount of a pollutant allowable that will attain the water quality standard necessary for beneficial uses.[98]

303(d) lists and TMDLs are required to be submitted to the Administrator "not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) [of the CWA]" and thereafter "from time to time," and the Administrator "shall either approve or disapprove such identification and load not later than thirty days after the date of submission."[99] A complete failure by a state to submit a TMDL for a pollutant received by waters designated as "water quality limited segments" pursuant to the CWA, will be construed as a constructive submission of no TMDL, triggering a nondiscretionary duty of the federal EPA to establish a TMDL for the state.[100] If the Administrator disapproves the 303(d) list or a TMDL, the Administrator "shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement [water quality standards]."[101] Finally, the identification of waters and setting of standards and TMDLs is required as a part of a state's "continuing planning process approved [by the Administrator] which is consistent with this chapter."[102]

---

[95] Code of Federal Regulations, title 40, part 130.7(d)(1); see also *San Francisco Baykeeper, Inc. v. Browner* (N.D. Cal 2001) 147 F.Supp.2d 991, 995.

[96] United States Code, title 33, section 1313(d)(1)(A).

[97] Code of Federal Regulations, title 40, part 130.7(c)(1).

[98] Code of Federal Regulations, title 40, part 130.2.

[99] United States Code, title 33, section 1313(d)(2); see also *San Francisco Baykeeper, Inc. v. Browner* (N.D. Cal. 2001) 147 F.Supp.2d 991, 995.

[100] United States Code, title 33, section 1313(d)(1)(A), (C), (d)(2); see also *San Francisco Baykeeper, Inc. v. Browner* (9th Circuit, 2002) 297 F.3d 877.

[101] United States Code, title 33, section 1313(d)(2).

[102] United States Code, title 33, section 1313(d-e).

If a TMDL has been established for a body of water identified as impaired under section 303(d), an NPDES permit must contain limitations that "must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality."[103] And, for new sources or discharges, the limitations must ensure that the source or discharge will not cause or contribute to the violation of water quality standards and will not violate the TMDL.[104]

3. Municipal Separate Storm Sewer System (MS4)

A "Municipal Separate Storm Sewer System" (or MS4) refers to a collection of structures designed to gather stormwater and discharge it into local streams and rivers. A storm sewer contains untreated water, so the water that enters a storm drain and then into a storm sewer enters rivers, creeks, or the ocean at the other end is the same water that entered the system.

4. Best Management Practices (BMPs)

The acronym "BMP" is short for Best Management Practice. In the context of water quality, BMPs are methods, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and non-point source discharges including stormwater. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during, and after pollution-producing activities.

C. Specific Federal Legal Provisions Relating to Stormwater Pollution Prevention

1. Federal Antidegradation Policy

When a TMDL has not been established, however, a permit may be issued provided that the new source does not degrade water quality in violation of the applicable anti-degradation policy. Any increase in loading of a pollutant to a waterbody that is impaired because of that pollutant would degrade water quality in violation of the applicable anti-degradation policy. Federal law, Code of Federal Regulations, title 40, section 131.12(a)(1), requires the state to adopt and implement an anti-degradation policy that will "maintain the level of water quality necessary to protect existing (in stream water) uses."

---

[103] Code of Federal Regulations, title 40, section 122.44(d)(1)(i), emphasis added.

[104] Code of Federal Regulations, title 40, section 122.4(i). See also Code of Federal Regulations, title 40, section 130.2(i); *Friends of Pinto Creek v. EPA* (9th Cir. 2007) 504 F.3d 1007, 1011 ("A TMDL specifies the maximum amount of a particular pollutant that can be discharged or loaded into the waters from all combined sources, so as to comply with the water quality standards").

NPDES permits must include conditions to achieve water quality standards and objectives and generally may not allow dischargers to backslide.[105]

2. Requirement to Effectively Prohibit Non-Stormwater Discharges

CWA section 402(p)(3)(B)(ii) requires that permits for MS4s "shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers."

3. Standard Setting for Dischargers of Pollutants: NPDES Permits

Section 1342 of the CWA provides for the NPDES program, the final piece of the regulatory framework under which discharges of pollutants are regulated and permitted, and applies whether or not a TMDL has been established. Section 1342 states that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title."[106] Section 1342 further provides that states may submit a plan to administer the NPDES permit program, and that upon review of the state's submitted program "[t]he Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State."[107]

Whether issued by the Administrator or by a state permitting program, all NPDES permits must ensure compliance with the requirements of sections 1311, 1312, 1316, 1317, and 1343 of the Act; must be for fixed terms not exceeding five years; can be terminated or modified for cause, including violation of any condition of the permit; and must control the disposal of pollutants into wells.[108] In addition, NPDES permits are generally prohibited, with some exceptions, from containing effluent limitations that are "less stringent than the comparable effluent limitations in the previous permit."[109] An NPDES permit for a point source discharging into an impaired water body must be

---

[105] United States Code, title 33, section 1311(b)(1)(C), which states, "in order to carry out the objective of this chapter there shall be achieved . . . any more stringent limitation, including those necessary to meet water quality standards"; section 1342(o)(3), which states, "In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters"; and Code of Federal Regulations, title 40, section 122.44(d)(1), which states that NPDES permits must include "any requirements in addition to or more stringent than promulgated effluent limitations guidelines . . . necessary to . . . [a]chieve water quality standards established under section 303 of the CWA."

[106] United States Code, title 33, section 1342(a)(1).

[107] United States Code, title 33, section 1342(a)(5); (b).

[108] United States Code, title 33, section 1342(b)(1).

[109] United States Code, title 33, section 1342(o).

consistent with the WLAs made in a TMDL, if a TMDL is approved and is applicable to the water body.[110]

4. The Federal Toxics Rules (40 CFR 131.36 and 131.38)

In 1987, Congress amended CWA section 303(c)(2) by adding subparagraph (B) which requires that a state, whenever reviewing, revising, or adopting new water quality standards, must adopt numeric criteria for all toxic pollutants listed pursuant to section 307(a)(1) for which criteria have been published under section 304(a). Section 303(c)(4) of the CWA authorizes the U.S. EPA Administrator to promulgate standards where necessary to meet the requirements of the Act. The federal criteria below are legally applicable in the State of California for inland surface waters, enclosed bays, and estuaries for all purposes and programs under the CWA.

5. National Toxics Rule (NTR)

For the 14 states that did not timely adopt numeric criteria as required, U.S. EPA promulgated the National Toxics Rule (NTR) on December 22, 1992 (57 FR 60848). About 40 criteria in the NTR apply in California.

6. The California Toxics Rule (CTR)

The "California Toxics Rule" is also a federal regulation, notwithstanding its somewhat confusing name. On May 18, 2000, U.S. EPA adopted the CTR. The CTR promulgated new toxics criteria for California to supplement the previously adopted NTR criteria that applied in the State. U.S. EPA amended the CTR on February 13, 2001. U.S. EPA promulgated this rule to fill a gap in California water quality standards that was created in 1994 when a state court overturned the state's water quality control plans which contained water quality criteria for priority toxic pollutants, leaving the state without numeric water quality criteria for many priority toxic pollutants as required by the CWA.

California had not adopted numeric water quality criteria for toxic pollutants as required by CWA section 303(c)(2)(B), which was added to the CWA by Congress in 1987 and was the only state in the nation for which CWA section 303(c)(2)(B) had remained substantially unimplemented after the U.S. EPA's promulgation of the NTR in December of 1992.[111] The Administrator determined that this rule was a necessary and important component for the implementation of CWA section 303(c)(2)(B) in California.

In adopting the CTR, U.S. EPA states:

> EPA is promulgating this rule based on the Administrator's determination that numeric criteria are necessary in the State of California to protect human health and the environment. The Clean Water Act requires States to adopt numeric water quality criteria for priority toxic pollutants for which EPA has issued criteria guidance, the presence or discharge of which could reasonably be expected to interfere with maintaining designated uses.

[110] Code of Federal Regulations, title 40, section 122.44(d).

[111] Federal Register, Volume 64, Number 97, page 7.

And:

> Numeric criteria for toxic pollutants allow the State and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Numeric criteria also provide a more precise basis for deriving water quality-based effluent limitations (WQBELs) in National Pollutant Discharge Elimination System (NPDES) permits and wasteload allocations for total maximum daily loads (TMDLs) to control toxic pollutant discharges. Congress recognized these issues when it enacted section 303(c)(2)(B) to the CWA.

D. The California Water Pollution Control Program

1. Porter-Cologne

California's water pollution control laws were substantially overhauled in 1969 with the Porter-Cologne Water Quality Control Act (Porter-Cologne).[112] Beginning with section 13000, Porter-Cologne provides:

> The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by all the people of the state.
>
> The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.
>
> The Legislature further finds and declares that the health, safety, and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state…and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.[113]

The state water pollution control program was again modified, beginning in 1972, so that the code would substantially comply with the federal CWA, and "on May 14, 1973, California became the first state to be approved by the EPA to administer the NPDES permit program."[114]

Section 13160 provides that the State Water Resources Control Board (State Board) "is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act…[and is] authorized to exercise any powers

---

[112] Water Code section 13020 (Stats. 1969, ch. 482).

[113] Water Code section 13000 (Stats. 1969, ch. 482).

[114] *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1565-1566; see also Water Code section 13370 *et seq*.

delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and acts amendatory thereto."[115] Section 13001 describes the state and regional boards as being "the principal state agencies with primary responsibility for the coordination and control of water quality."

To achieve the objectives of conserving and protecting the water resources of the state, and in exercise of the powers delegated, Porter-Cologne, like the CWA, employs a combination of water quality standards and point source pollution controls.[116]

Under Porter Cologne, the nine regional boards' primary regulatory tools are the water quality control plans, also known as basin plans.[117] These plans fulfill the planning function for the water boards, are regulations adopted under the Administrative Procedure Act with a specialized process,[118] and provide the underlying basis for most of the regional board's actions (e.g., NPDES permit conditions, cleanup levels). Basin plans consist of three elements:

- Determination of beneficial uses;
- Water quality objectives to reasonably protect beneficial uses; and
- An implementation program to achieve water quality objectives.[119]

Porter Cologne sections 13240-13247 address the development and implementation of regional water quality control plans (i.e., basin plans), including "water quality objectives," defined in section 13050 as "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."[120] Section 13241 provides that each regional board "shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance." The section directs the regional boards to consider, when developing water quality objectives:

(a) Past, present, and probable future beneficial uses of water.

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

---

[115] Water Code section 13160 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats. 1976, ch. 596).

[116] Water Code section 13142 (Stats. 1969, ch. 482; Stats. 1971, ch. 1288; Stats. 1979, ch. 947; Stats. 1995, ch. 28).

[117] Water Code sections 13240-13247.

[118] Water Code sections 11352-11354.

[119] Water Code section 13050(j), see also section 13241.

[120] Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 847 (SB 206); Stats. 1996, ch. 1023 (SB 1497)).

(c) Water quality conditions that could reasonably by achieved through the coordinated control of all factors which affect water quality in the area.

(d) Economic considerations.

(e) The need for developing housing within the region.

(f) The need to develop and use recycled water.[121]

Beneficial uses, in turn, are defined in section 13050 as including, but not limited to, "domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves."[122] In addition, section 13243 permits a regional board to define "certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted."[123]

Sections 13260-13274 address the development of "waste discharge requirements," which section 13374 states "is the equivalent of the term 'permits' as used in the Federal Water Pollution Control Act, as amended."[124] Section 13263 permits the regional boards, after a public hearing, to prescribe waste discharge requirements "as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system." Section 13263 also provides that the regional boards "need not authorize the utilization of the full waste assimilation capacities of the receiving waters," and that the board may prescribe requirements although no discharge report has been filed, and may review and revise requirements on its own motion. The section further provides that "[a]ll discharges of waste into waters of the state are privileges, not rights."[125] Section 13377 permits a regional board to issue waste discharge requirements "which apply and ensure compliance with all applicable provisions of the [Federal Water Pollution Control Act]."[126] In effect, sections 13263 and 13377 permit the issuance of waste discharge requirements concurrently with an NPDES permit if a discharge is to waters of both California and the United States.

The California Supreme Court explained the interplay between state and federal law in *Department of Finance v. Commission on State Mandates* as follows:

---

[121] Water Code section 13241 (Stats. 1969, ch. 482; Stats. 1979, ch. 947; Stats. 1991, ch. 187 (AB 673)).

[122] Water Code section 13050 (Stats. 1969, ch. 482; Stats. 1969, ch. 800; Stats. 1970, ch. 202; Stats. 1980, ch. 877; Stats. 1989, ch. 642; Stats. 1991, ch. 187 (AB 673); Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 847 (SB 206); Stats. 1996, ch. 1023 (SB 1497)).

[123] Water Code section 13243 (Stats. 1969, ch. 482).

[124] Water code section 13374 (Stats. 1972, ch. 1256).

[125] Water Code section 13263(a), (b), (g) (Stats. 1969, ch. 482; Stats. 1992, ch. 211 (AB 3012); Stats. 1995, ch. 28 (AB 1247); Stats. 1995, ch. 421 (SB 572)).

[126] Water Code section 13377 (Stats. 1972, ch. 1256; Stats. 1978, ch. 746).

California was the first state authorized to issue its own pollutant discharge permits. (Citations omitted.) Shortly after the CWA's enactment, the Legislature amended the Porter–Cologne Act, adding chapter 5.5 (Wat. Code, § 13370 et seq.) to authorize state issuance of permits (Wat. Code, § 13370, subd. (c)). The Legislature explained the amendment was "in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to [the Porter–Cologne Act]." (*Ibid*.) The Legislature provided that Chapter 5.5 be "construed to ensure consistency" with the CWA. (Wat. Code, § 13372, subd. (a).) It directed that state and regional boards issue waste discharge requirements "ensur[ing] compliance with all applicable provisions of the [CWA] ... *together with any more stringent effluent standards or limitations* necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." (Wat. Code, § 13377, italics added.) To align the state and federal permitting systems, the legislation provided that the term " 'waste discharge requirements' " under the Act was equivalent to the term " 'permits' " under the CWA. (Wat. Code, § 13374.) Accordingly, California's permitting system now regulates discharges under both state and federal law. (Citations omitted.)

In 1987, Congress amended the CWA to clarify that a permit is required for any discharge from a municipal storm sewer system serving a population of 100,000 or more. (33 U.S.C. § 1342(p)(2)(C), (D).) Under those amendments, a permit may be issued either on a system- or jurisdiction-wide basis, must effectively prohibit nonstorm water discharges into the storm sewers, and must "require controls to reduce the discharge of pollutants *to the maximum extent practicable*." (33 U.S.C. § 1342(p)(3)(B), italics added.) The phrase "maximum extent practicable" is not further defined. How that phrase is applied, and by whom, are important aspects of this case.

EPA regulations specify the information to be included in a permit application. (See 40 C.F.R. § 122.26(d)(1)(i)-(vi), (d)(2)(i)-(viii).) Among other things, an applicant must set out a proposed management program that includes management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable. (40 C.F.R. § 122.26(d)(2)(iv).) The permit-issuing agency has discretion to determine which practices, whether or not proposed by the applicant, will be imposed as conditions. (*Ibid*.)[127]

[127] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 757.

2. California's Antidegradation Policy (State Water Resources Control Board Resolution No. 68-16 adopted October 24, 1968)

In 1968, the State Board adopted Resolution 68-16, formally entitled "Statement of Policy With Respect to Maintaining High Quality of Waters In California," to prevent the degradation of surface waters where background water quality is higher than the established level necessary to protect beneficial uses. That executive order states the following:

> WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and
>
> WHEREAS water quality control policies have been and are being adopted for waters of the State; and
>
> WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;
>
> NOW, THEREFORE, BE IT RESOLVED:
>
> Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
>
> Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
>
> In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.[128]

State Board Resolution 68-16, Statement of Policy With Respect to Maintaining High Quality of Waters in California, is the policy that the State asserts incorporates the

[128] Exhibit N (29), State Water Resources Control Board, Resolution No. 68-16, page 1.

federal antidegradation policy. The Water Quality Control Plans in turn (i.e., Basin Plans) require conformity with State Board Resolution 68-16. Therefore, any provisions in a permit that are inconsistent with the State's anti-degradation policy are also inconsistent with the Basin Plan.

3. Administrative Procedures Update, Antidegradation Policy Implementation for NPDES Permitting, 90-004

The May 1990 Administrative Procedures Update, entitled Antidegradation Policy Implementation for NPDES Permitting, APU 90-004, provides guidance for the State's regional boards in implementing the State Board's Resolution No. 68-16, Statement of Policy With Respect to Maintaining High Quality of Waters in California, and the Federal Antidegradation Policy, as set forth in Code of Federal Regulations, title 40, part 131.12. It states that "If baseline water quality is equal to or less than the quality as defined by the water quality objective, water quality shall be maintained or improved to a level that achieves the objectives."[129]

4. Statewide Plans: The Ocean Plan, the California Inland Surface Waters Plan (ISWP), and the Enclosed Bays and Estuaries Plan (EBEP)

California has adopted an Ocean Plan, applicable to interstate waters, and two other state-wide plans which establish water quality criteria or objectives for all fresh waters, bays and estuaries in the State.

a. California Ocean Plan

Section 303(c)(3)(A) of the CWA provides that "[a]ny State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the [U.S. EPA] Administrator." Section 303(c)(3)(C) further provides that "[i]f the [U.S. EPA] Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section." Thus, beginning October 18, 1972, states were required to adopt water quality laws applicable to intrastate waters or else allow the U.S. EPA to adopt such standards for them.

California's first adopted its Ocean Plan in July 6, 1972, and amended it in 1978, 1983, 1988, 1990, 1997, 2001, 2005, and 2009.[130]

---

[129] Exhibit N (6), Excerpt from State Water Resources Control Board, Administrative Procedures Update, 90-004, page 2.

[130] California first adopted its Ocean Plan on July 6, 1972, and has amended it in 1978 (Order 78-002, adopted 1/19/1978), 1983 (Order 83-087, adopted 11/17/1983), 1988 (Order 88-111, adopted 9/22/1988), 1990 (Order 90-027, amendment regarding new water quality objectives in Table B, adopted 3/22/1990), 1997 (Order 97-026,

b. The California Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP)

On April 11, 1991, the State Board adopted two statewide water quality control plans, the California Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP). These statewide plans contained narrative and numeric water quality criteria for toxic pollutants, in part to satisfy CWA section 303(c)(2)(B). The water quality criteria contained in these statewide plans, together with the designated uses in each of the Basin Plans, created a set of water quality standards for waters within the State of California.

Specifically, the two plans established water quality criteria or objectives for all fresh waters, bays and estuaries in the State.

Section 303(c)(2)(B) of the federal CWA requires that states adopt numeric criteria for priority pollutants for which EPA has issued criteria guidance, as part of the states' water quality standards. As discussed above, U.S. EPA promulgated these criteria in the CTR in 2000 because the State court overturned two of California's water quality control plans (the ISWP and the EBEP) in 1994 and the State failed to promulgate new plans, so the State was left without enforceable standards. The federal toxics criteria apply to the State of California for inland surface waters, enclosed bays, and estuaries for "all purposes and programs under the CWA" and are commonly known as "the California Toxics Rule" (CTR).[131] There are 126 chemicals on the federal CTR[132] and the State Implementation Policy (SIP) for Implementation of the Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries adds another 6 isomers of chlorinated dioxins and 10 isomers of chlorinated furans for optional use in California (however, these are required to be used in the California Ocean Plan).

The EBEP was later adopted with respect to sediment quality objectives for toxic pollutants by the State Board on September 16, 2008 (Resolution No. 2008-0070), effective on January 5, 2009, and has been amended twice after the adoption of the test claim permit on April 6, 2011 (Resolution No. 2011-0017), effective on June 8, 2011 and June 5, 2018 (Resolution No. 2018-0028), effective March 11, 2019.

---

amendment regarding revisions to the list of critical life stage protocols used in testing the toxicity of waste discharges, adopted 3/20/1997), 2001 (Order 2000-108, amendment regarding Table A, chemical water quality objectives, provisions of compliance, special protection for water quality and designated uses, and administrative changes, adopted 11/16/2000), 2005 (Order 2005-0013, amendment regarding Water Contact Bacterial Standards, adopted 1/20/2005; Order 2005-0035, amendments regarding (1) Reasonable Potential, Determining When California Ocean Plan Water Quality-Based Effluent Limitations are Required, and (2) Minor Changes to the Areas of Special Biological Significance, and Exception Provisions, 4/21/2005) and 2009 (Order 2009-0072, amendments regarding total recoverable metals, compliance schedules, toxicity definitions, and the list of exceptions, adopted 9/15/2009).

[131] Code of Federal Regulations, title 40, Part 131, May 18, 2000.

[132] See Code of Federal Regulations, title 40, Part 131, May 18, 2000.

Likewise, the following adopted amendments, all of which were adopted after the test claim permit at issue in this case, were incorporated into the ISWP:

- Part 1: Trash Provisions, adopted on April 7, 2015 (Resolution No. 2015-0019), effective on December 2, 2015
- Part 2: Tribal Subsistence Beneficial Uses and Mercury Provisions, adopted on May 2, 2017 (Resolution No. 2017-0027), effective on June 28, 2017
- Part 3: Bacteria Provisions and Variance Policy, adopted on August 7, 2018 (Resolution No. 2018-0038), effective on February 4, 2019
- State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (for waters of the United States only), adopted April 2, 2019 (Resolution No. 2019-0015), effective May 28, 2020.

5. Basin Plans (also known as Water Quality Control Plans)

The Basin Plan is a regional board's master water quality control planning document for a particular water basin. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also must include any TMDL programs of implementation to achieve water quality objectives.[133] Basin Plans must be adopted by the regional board and approved by the State Board, the California Office of Administrative Law (OAL), and U.S. EPA, in the case of action on surface waters standards.[134]

E. History of the Test Claim Permit, Order No. R8-2010-0033

The claimants own and operate portions of an MS4 located within the Santa Ana River Basin in the Santa Ana Region.[135] The permit area comprises 1,396 square miles in the northwestern corner of Riverside County and includes 15 of the 26 municipalities within Riverside County: the County of Riverside and the Cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Wildomar.[136] Sixty-seven percent of the population of Riverside County resides within the permit area.[137] The Santa Ana River Basin is the major watershed within the Santa Ana Region and is divided into three sub-watersheds, two of which are within the permit area: the Middle Santa Anta River watershed, which includes portions of the permit area that drain to Reaches 3 and 4 of the Santa Ana River; and the San Jacinto subwatershed, which includes portions of the permit area

[133] Water Code section 13241.

[134] Water Code section 13245; United States Code, title 33, section 1313(c)(1).

[135] Exhibit A, Test Claim, filed January 31, 2011, page 129 (test claim permit, Section I.A).

[136] Exhibit A, Test Claim, filed January 31, 2011, pages 125 (test claim permit, Table 1), 131 (test claim permit), 312 (test claim permit, Appendix 6 [Fact Sheet]).

[137] Exhibit A, Test Claim, filed January 31, 2011, page 305 (test claim permit, Appendix 6 [Fact Sheet]).

that drain to Lake Elsinore.[138] Because of its arid climate, there is limited natural perennial surface water, and less than one-fifth of the county area drains into the Santa Ana River watershed's water bodies, which include rivers and streams, lakes, and reservoirs.[139] The beneficial uses of these surface water bodies include: "municipal and domestic supply, agricultural supply, industrial service supply, industrial process supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, wildlife habitat, and preservation of rare and endangered species."[140]

The test claim permit, Order No. R8-2010-0033, is the fourth iteration of the NPDES permit for the claimants' MS4 (fourth term permit).[141] In 1990, the Regional Board adopted the first term Riverside County MS4 Permit (Order No. 90-104) for areas in Riverside County in the permit area. The order was renewed in 1996 (Order No. 96-30), and again in 2002 (Order No. R8-2002-0011).[142]

A 2006 water quality assessment by the Regional Board listed a number of waterbodies in the permit area as impaired under Section 303(d) of the CWA, including: Canyon Lake (pathogens), Lake Elsinore (unknown toxicity, PCBs, sediment toxicity), Lake Fulmor (pathogens), Santa Ana River, Reach 3 (pathogens, copper), Temescal Creek, Reach 1 (pH).[143] The sources of impairments include publicly owned treatment works discharges and runoff from agricultural, open space, and urban land uses. The test claim permit incorporates TMDLS that were adopted for bacterial indicator in the Middle Santa Ana River watershed and for nutrients in the Lake Elsinore and Canyon Lake watersheds.[144]

---

[138] Exhibit A, Test Claim, filed January 31, 2011, pages 243 (test claim permit), 331 (test claim permit, Appendix 6 [Fact Sheet]).

[139] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 5-6.

[140] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 7.

[141] R8-2010-0033 is both an "order" of the Regional Board and an NPDES "permit." This analysis will refer to it as the "test claim permit."

[142] Exhibit A, Test Claim, filed January 31, 2011, page 310 (test claim permit, Appendix 6 [Fact Sheet]).

[143] Exhibit A, Test Claim, filed January 31, 2011, pages 316, 318 (test claim permit, Appendix 6 [Fact Sheet]).

[144] Exhibit A, Test Claim, filed January 31, 2011, page 317 (test claim permit, Appendix 6 [Fact Sheet]). On August 26, 2005, the Regional Board adopted Resolution No. RB-2005-001 amending the Basin Plan to incorporate Bacterial Indicator TMDL for the Middle Santa Ana River watershed on August 26, 2005 and resolution RB-2004-0037 amending the Basin Plan to incorporate the Lake Elsinore and Canyon Lake nutrient TMDLs on December 20, 2004.

On January 29, 2010, the Regional Board adopted the test claim permit.[145] The prior permits saw an increased shift toward a watershed-based management approach.[146] The Fact Sheet indicates that an integrated watershed approach continues under the test claim permit:

> This Order specifies quantifiable performance measures to determine compliance and assess the effectiveness of the Urban Runoff programs. This Order incorporates an integrated watershed approach in solving water quality and Hydromodification impacts resulting from urbanization and aims to promote LID techniques as a key element to mitigate impacts from New Development and Significant Redevelopment projects. The proposed Order also requires the Permittees to implement TMDL WLA through iterative BMP programs as required in the respective approved TMDL Implementation Plans (See Section V.C). The goal of these programs and policies that are included in this Order is to achieve and maintain Water Quality Standards in the Receiving Waters.[147]

Audits conducted during the prior permit term showed deficiencies in implementing the watershed protection principles into the development planning and approval process, as well as in evaluating management program effectiveness, both of which the test claim permit attempts to resolve.[148]

Because urban runoff from the cities of Menifiee, Murrieta, and Wildomar discharges into the jurisdictions of the Santa Ana and San Diego Regional Board, these cities are regulated by permits issued by both Regional Boards.[149] The Riverside County Flood Control and Water Conservation District is the principal permittee under the test claim permit, and is responsible for coordinating the overall urban runoff management program.[150] The county and city co-permittees are responsible for managing the urban runoff program within the jurisdictions.[151]

---

[145] Exhibit A, Test Claim, filed January 31, 2011, page 125 (test claim permit).

[146] Exhibit A, Test Claim, filed January 31, 2011, page 331 (test claim permit, Appendix 6 [Fact Sheet]).

[147] Exhibit A, Test Claim, filed January 31, 2011, page 333 (test claim permit, Appendix 6 [Fact Sheet]).

[148] Exhibit A, Test Claim, filed January 31, 2011, pages 330, 332 (test claim permit, Appendix 6 [Fact Sheet]).

[149] Exhibit A, Test Claim, filed January 31, 2011, page 131 (test claim permit).

[150] Exhibit A, Test Claim, filed January 31, 2011, page 334 (test claim permit, Appendix 6 [Fact Sheet]).

[151] Exhibit A, Test Claim, filed January 31, 2011, pages 276 (test claim permit, Appendix 4 [Glossary, defining “co-permittees” as County of Riverside and the cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Menifee, Murrieta, Moreno Valley, Norco, Perris, Riverside, San Jacinto, and Wildomar]), 334 (test claim permit, Appendix 6 [Fact Sheet]).

The test claim permit was amended in 2013 by Order No. R8-2013-0024 to (1) add the Cities of Eastvale and Jurupa Valley to the list of permittees; (2) remove Murrieta and Wildomar from the list of Permittees; and (3) add all portions of the City of Menifee.[152]

III. Positions of the Parties

A. County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto

The claimants allege the sections of the permit pled in this Test Claim impose reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution. As will be covered within the analysis of the specific sections pled below, the claimants contend that the test claim permit includes numerous new requirements that exceed what is required under federal law.[153] The claimants note that the Commission has twice found the imposition of reimbursable state-mandated programs in MS4 permits issued by the Los Angeles and the San Diego regional boards.[154]

The claimants assert that the CWA leaves substantial discretion to the states in adopting permits, noting that "the California Supreme Court, in *City of Burbank*, has expressly held that a regional board has the authority to issue a permit that exceeds the requirements of the CWA and its accompanying federal regulations."[155] Furthermore, the Court, in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, expressly rejected the argument that just because a provision was in a stormwater NPDES permit, it was "'ipso facto, required by federal law.'"[156] The claimants assert that under *Department of Finance*, if the state has discretion to impose a particular implementing requirement and does so by virtue of a true choice, then the requirement is state-mandated.[157]

The claimants contend that *Department of Finance* "provide[s] the Commission with a clear test that it can apply in evaluating whether an MS4 permit provision in fact

---

[152] See Exhibit N (1), California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013.

[153] Exhibit A, Test Claim, filed January 31, 2011, page 27 (Test Claim narrative).

[154] Exhibit A, Test Claim, filed January 31, 2011, page 29 (Test Claim narrative), citing *In re Test Claim on: Los Angeles Regional Quality Control Board Order No. 01-192*, Test Claim Nos.: 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21; *In re Test Claim on: San Diego Regional Water Quality Control Board Order No. R9-2007-0001*, Test Claim No. 07-TC-09.

[155] Exhibit A, Test Claim, filed January 31, 2011, page 27 (Test Claim narrative), citing *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613.

[156] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, page 5, quoting *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768.

[157] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, page 2.

represents a federal or state mandate, and where the burden of persuasion lies," and as applied to the test claim permit, "must lead this Commission to conclude that the provisions represent state mandates."[158] The claimants contend that three "key" mandates cases (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, and *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564) establish that "the Commission must employ this test, and allocate to the State the burden of proving that the provision in question represents a federal, as opposed to state, mandate."[159]

The claimants further assert that *Department of Finance* found that the Water Boards have great discretion in establishing permit requirements and rejected the State's argument that the Commission must defer to the Water Board's determination of what constitutes a federal mandate.[160] The claimants concede that the Commission must defer to the Water Boards' expertise if a regional board finds that the permit conditions are the only means to implement the MEP standard; however, the claimants argue, "[s]uch a finding must be case specific" and here, there are no such sufficient case-specific findings in the test claim permit or Fact Sheet.[161]

In comments on the Draft Proposed Decision, the claimants assert that the Draft Proposed Decision does not discuss "how the Clean Water Act ('CWA') leaves substantial discretion to the states in adopting permit requirements which go beyond CWA requirements."[162] The claimants cite to *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999), for the proposition that "California can tailor its MS4 permits to require strict compliance with water quality standards and adopt other MS4 permit requirements that go beyond the MEP standard."[163] The claimants also cite to *Department of Finance v. Comm. on State Mandates* (2016) 1 Cal. 5th 749 for the Supreme Court's rejection of an argument raised by Finance and the Water Boards that inclusion of a provision in an NPDES permit necessarily means it was required under federal law.

Additional issues raised by the claimants in comments on the Draft Proposed Decision are covered within the analysis of the specific sections pled below.[164]

---

[158] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, page 6.

[159] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, pages 3-4.

[160] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, pages 3-4.

[161] Exhibit E, Claimants' Supplemental Brief, filed May 31, 2017, page 9.

[162] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 4.

[163] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 5.

[164] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 3-41.

B. Department of Finance

Finance asserts that the test claim permit does not impose a reimbursable state mandate because the test claim permit and its requirements are required by the CWA and should therefore be denied under the federal mandate exception under Government Code section 17556(c).[165] Finance defers to the Water Boards on the issues of whether the test claim permit imposes a new program or higher level of service and the impact of the decision in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749.[166]

Finance also contends that under Government Code section 17556(d), there can be no finding of a reimbursable state-mandated program because the claimants have the authority to impose fees sufficient to pay for the permit activities "undiminished by Propositions 218 or 26."[167] Proposition 26 specifically excludes assessments and property-related fees imposed under Proposition 218 from the definition of taxes.[168] Moreover, the claimants can impose property-related fees under their police powers. Relying on the holding in *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, Finance asserts that to the extent that a local government has authority to charge for program costs, those charges cannot be recovered as a state-mandated cost. As applied here, the claimants "can choose to not put a fee to the voters, or the voters can reject a fee, but not at the state's expense."[169]

While Finance agrees with the staff recommendation to deny the test claim for the District, Finance challenges the application of SB 231 and *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351 "in concluding that prior to January 1, 2018, claimants lacked fee authority due to the voter approval requirement of Proposition 218."[170] Finance asserts that if the Commission should find a reimbursable state-mandated program, the Commission should identify the potential offsetting revenues identified by the claimants (e.g., benefit assessments, fuel taxes, County Service Area funding, existing sewer and storm drain fees, NPDES Rate Schedule funding, and Landscape and Lighting Park Districts fees).[171]

---

[165] Exhibit B, Finance's Comments on the Test Claim, filed August 26, 2011, page 1.

[166] Exhibit G, Finance's Supplemental Brief, filed May 31, 2017, page 1; Exhibit L, Finance's Comments on the Draft Proposed Decision, filed January 5, 2024, page 1.

[167] Exhibit G, Finance's Supplemental Brief, filed May 31, 2017, pages 1-2; Exhibit L, Finance's Comments on the Draft Proposed Decision, filed January 5, 2024, page 1.

[168] Exhibit G, Finance's Supplemental Brief, filed May 31, 2017, page 1, citing California Constitution, article XIIIC, section 1(e)(7).

[169] Exhibit G, Finance's Supplemental Brief, filed May 31, 2017, page 2.

[170] Exhibit L, Finance's Comments on the Draft Proposed Decision, filed January 5, 2024, page 1.

[171] Exhibit G, Finance's Supplemental Brief, filed May 31, 2017, page 2.

C. Water Boards[172]

As will be covered in more detail in the analysis below, the Regional Board contends that the claimants cannot show that the requirements of the test claim permit constitute a new program or higher level of service because the "Permit as a whole, including the challenged provisions, is mandated on the local governments by federal law."[173] The Regional Board argues that the test claim permit "reflects the Santa Ana Water Board's determination that each of the challenged permit provisions was *required* to comply with the federal requirement that MS4 permits impose controls that reduce the discharge of pollutants to the MEP [maximum extent practicable], and each provision was based entirely on federal authority."[174]

In addition to emphasizing that the "central issue before the Commission is whether the challenged requirements exceed the federal mandate for MS4 permits,"[175] the Regional Board makes the following general arguments: the test claim permit does not require subvention because the test claim permit does not impose a new program or higher level of service; the permittees requested the Regional Board to include most of the permit provisions for which they now seek subvention; the requirements are not unique to local government; the permittees have the authority to pay for the requirements by raising stormwater fees; any cost increases that resulted solely from state law requirements are de minimis; and the test claim permit must be evaluated as a whole to determine whether MEP has been exceeded.[176]

The Regional Board also asserts that the claimants failed to exhaust required administrative remedies before filing the test claim.[177] According to the Regional Board, the Water Code provides an administrative remedy to a party challenging a Regional Board decision, which the claimants here did not pursue prior to filing this action. Because the test claim involves the issue of whether certain provisions in a Regional Board-issued permit exceed minimum federal requirements, and the Regional Board

---

[172] This section addresses both comments filed by the Regional Board and comments filed by the Water Boards. See Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011; Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017; Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024.

[173] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 2.

[174] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, page 2, emphasis in original.

[175] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 13-17.

[176] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 12, 17-21.

[177] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 20.

already found that they do not, the test claim is an improper collateral attack on the test claim permit.

The Regional Board further contends that the Test Claim raises the following issues that were not addressed by the Supreme Court in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749:

1. Here, the Regional Board specifically found the permit requirements at issue in this test claim are federal mandates;
2. Unlike *Department of Finance*, where the Regional Board did not dispute that the permit requirements were a new program or higher level of service, here, the Regional Board contends that none of the requirements of test claim permit are a new program or higher level of service;
3. There was no evaluation in *Department of Finance* of whether the requirements were required under a TMDL or other federal law, such as the requirement to effectively prohibit non-stormwater discharges into their MS4s;
4. None of the requirements evaluated in *Department of Finance* were included in any U.S. EPA-issued permits, which is not the case here;
5. Whether local government had the authority to levy fees or assessments pursuant to Government Code section 17556(d) was not decided in the Supreme Court's decision in *Department of Finance*;
6. *Department of Finance* did not consider whether the requirements were generally applicable and not unique to government;
7. *Department of Finance* did not evaluate the permittees' voluntary participation in the NPDES program.[178]

The Regional Board asserts that under *Department of Finance*, whether a particular requirement exceeds the federal standards is a case-specific, factual determination.[179] As applied to the test claim permit, the Regional Board argues that its findings regarding federal law are entitled to deference. In contrast to *Department of Finance*, the Regional Board here specifically found when issuing the test claim permit that "it is entirely the federal authority that forms the legal basis to establish the permit provisions" and that "[t]his Order implements federally mandated requirements under [the Clean Water Act]."[180]

Furthermore, *Department of Finance* has limited application when the federal standard that compels a challenged permit provisions is separate from the federal MEP standard, e.g., the CWA requirement to prohibit non-stormwater discharges. Here, in addition to implementing the federal prohibition of non-stormwater discharges, the test claim permit

[178] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, pages 2-3.

[179] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, page 3.

[180] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, pages 3-4.

implements TMDL requirements, which federal law specifically compelled the Regional Board to include.[181]

The Regional Board contends that the fact that U.S. EPA has required provisions like those at issue in the test claim permit shows that the Regional Board effectively applied federal requirements here. Where the challenged provisions are more detailed or specific than the prior permit, they are consistent with U.S. EPA's guidance regarding the iterative process that applies to stormwater permits.[182]

Finally, the Regional Board asserts that *Department of Finance* applies only to the Regional Board's arguments that the challenged provisions in the test claim permit are mandated by federal law and has no effect on the other arguments raised by the Regional Board, namely that (a) the challenged provisions do not impose new programs or higher levels of service; (b) the challenged provisions do not impose requirements unique to local agencies and are not mandates particular to government; (c) the claimants have the authority to levy service charges, fees, or other assessments to pay for the programs; and (d) the claimants did not exhaust their administrative remedies and cannot collaterally attack the validity of the test claim permit in this forum.[183]

The Water Boards filed comments on the Draft Proposed Decision, stating their agreement with the denial of numerous provisions in the test claim permit, but asserting that the requirements to develop and revise Local Implementation Plans are not state mandates and that the claimants have fee authority for the entire test claim period.[184] The particular points raised by the Water Boards regarding the test claim permit's Local Implementation Plan activities and the claimants' fee authority are covered within the analysis of those issues below.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 such local government for the costs of such programs or increased level of service…
>
> The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[185]

---

[181] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, pages 4-5.

[182] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, pages 5-6.

[183] Exhibit H, Regional Board's Supplemental Brief, filed May 31, 2017, pages 6-7.

[184] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, pages 1-4.

[185] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[186]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[187]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or
   b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[188]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[189]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[190]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[191] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[192] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the

---

[186] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[187] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[188] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

[189] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[190] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[191] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[192] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[193]

A. The Commission Has Jurisdiction Over This Test Claim.

1. The Test Claim Was Timely Filed and Has a Potential Period of Reimbursement Beginning January 29, 2010.

Government Code section 17551 provides that local government test claims shall be filed "not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[194] Under Government Code section 6707, "[w]hen the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."[195] In addition, under section 1183.18 of the Commission's regulations, "[t]he day of the act, event, or default from which the designated period of time begins to run shall not be included" and "[t]he last day of the period so computed shall be included, *unless it is a Saturday, Sunday, or state holiday*." The effective date of the test claim permit is January 29, 2010 and the Test Claim was filed on January 31, 2011.[196] Because January 29, 2011 falls on a Saturday, the Test Claim was timely filed on Monday, January 31, 2011.

Government Code section 17557(e) requires a test claim to be "submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Because the Test Claim was filed on January 31, 2011, the potential period of reimbursement under Government Code section 17557 begins on July 1, 2009. However, since the test claim permit has a later effective date, the potential period of reimbursement for this test claim begins on the permit's effective date, January 29, 2010.

2. Based on a Later Adopted Order Amending the Test Claim Permit, the Cities of Murrieta and Wildomar Are Eligible Claimants Under the Test Claim Permit Only Up to and Including June 6, 2013, But the Cities of Eastvale and Jurupa Valley Are Not Eligible Claimants Under the Test Claim Permit.

On June 7, 2013, Order No. R8-2013-0024 amended the test claim permit to make three changes to the list of permittees: (1) remove Murrieta and Wildomar; (2); add the Cities of Eastvale and Jurupa Valley; and (3) "add all portions of the City of Menifee… including those portions that are under the jurisdiction of the San Diego Regional

---

[193] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 (citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817).

[194] Government Code section 17551(c) (Stats. 2007, ch. 329).

[195] Government Code section 6707 (Stats. 1957, ch. 1649).

[196] Exhibit A, Test Claim, filed January 31, 2011, pages 5, 125.

Board."[197] The Cities of Murrieta and Wildomar are eligible claimants under the test claim permit (R8-2010-0033) whose potential period of reimbursement ends June 6, 2013.[198] The City of Menifee's eligibility for reimbursement under the test claim permit is unaffected by the permit amendment.[199]

The claimants assert that because Order No. R8-2013-0024 only amended the test claim permit by adding and removing permittees and did not make any substantive changes, the Cities of Eastvale and Jurupa Valley should be considered as potential claimants under the test claim permit.[200]

However, there has been no test claim filing on Order No. R8-2013-0024, and the Commission does not have the jurisdiction to make findings on that order. The law requires a separate test claim to be filed for each "particular statute or executive order" alleged to impose costs mandated by the state.[201] The test claim must "identif[y] the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate"[202] and must be filed within the

---

[197] Exhibit N (1), California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013. Urban Runoff from the City of Menifee discharges into watersheds within the Santa Ana Regional Board and the San Diego Regional Board jurisdictions. On July 22, 2010, the City of Menifee requested that the San Diego Regional Board designate the Santa Ana Regional Board as the regulating authority for all portions of the city, regardless of Regional Board jurisdictional boundaries for matters pertaining to MS4 permitting. On September 28, 2010, the Executive Officer of the San Diego Regional Water Quality Control Boards signed a Designation Agreement, pursuant to Water Code section 13228(a), providing the Santa Ana Regional Board the authority to regulate municipal storm water runoff from all portions of the City of Menifee, including those portions that are within the San Diego Regional Board's jurisdiction. Order RB-2010-0033 requires the City of Menifee to comply with any TMDLs and associated MS4 permit requirements issued by the San Diego Regional Board which include the City of Menifee as a responsible party. Exhibit N (1), California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013, pages 2-3.

[198] Exhibit N (1), California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013, pages 1, 6.

[199] Exhibit A, Test Claim, filed January 31, 2011, page 125 (test claim permit).

[200] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 6.

[201] Government Code sections 17516 ("Executive order" means an order, plan, requirement, rule, or regulation issued by any state agency), 17521 ("Test claim" means the first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state).

[202] Government Code section 17553(b)(1); California Code of Regulations, title 2, section 1183.1(d).

statute of limitations.[203] Whether a statute or executive order imposes a reimbursable state-mandated program is a question of law and not equity, and thus the Commission must strictly construe article XIII B, section 6 and the language of the pled test claim statute or executive order in making that determination.[204] Furthermore, under Government Code section 17557(e), the claimants had the opportunity to amend the test claim to add the later adopted order "at any time, but before the test claim is set for a hearing, without affecting the original filing date as long as the amendment substantially relates to the original test claim."[205] That did not occur here. As such, the Commission does not have jurisdiction to determine if the Cities of Eastvale and Jurupa Valley incurred reimbursable state-mandated costs pursuant to Order R8-2013-0024.

The Cities of Eastvale and Jurupa Valley are not permittees under the test claim permit (Order No. R8-2010-0033) and are therefore not eligible to claim reimbursement for the activities required by the test claim permit.[206]

3. The Claimants Are Not Required to Exhaust Administrative Remedies with the State Water Board Prior to Filing a Test Claim with the Commission.

The Regional Board argues that the test claim filing constitutes an impermissible collateral attack on the test claim permit.[207] The Regional Board asserts that the Test Claim requires the Commission to "determine whether various Permit provisions exceed the minimum federal requirements established under the CWA that govern the issuance of MS4 permits," and the Regional Board "already found that they do not." The Regional Board maintains that the "Water Code provides an administrative remedy to a party challenging a Regional Water Board decision," which the claimants did not pursue here, and "the question of whether Permit provisions exceed federal requirements is more properly brought before the State Water Board."

The Board's argument is unfounded. The Commission has exclusive jurisdiction to determine whether a statute or executive order imposes a reimbursable state-mandated program, and the Test Claim does not constitute a collateral attack on the merits of the test claim permit.[208]

---

[203] Government Code section 17551; California Code of Regulations, title 2, section 1183.1(c).

[204] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280-1281.

[205] Government Code section 17557(e) (as amended by Stats. 2010, ch. 719).

[206] Exhibit A, Test Claim, filed January 31, 2011, page 125 (test claim permit, Table 1).

[207] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 20.

[208] Government Code section 17552; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 917-920, which concludes that NPDES permits

In *Department of Finance v. Commission on State Mandates*, the Court distinguished between challenging a stormwater permit on the merits and seeking reimbursement for a state-mandated program imposed by a stormwater permit:

> Certainly, in a trial court action challenging the *board's authority* to impose specific permit conditions, the board's findings regarding what conditions satisfied the federal standard would be entitled to deference. (See, e.g., *City of Rancho Cucamonga v. Regional Water Quality Control Bd.* (2006) 135 Cal.App.4th 1377, 1384, 38 Cal.Rptr.3d 450, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817–818, 85 Cal.Rptr.2d 696, 977 P.2d 693). Resolution of those questions would bring into play the particular technical expertise possessed by members of the regional board. In those circumstances, the party challenging the board's decision would have the burden of demonstrating its findings were not supported by substantial evidence or that the board otherwise abused its discretion. (*Rancho Cucamonga*, at p. 1387, 38 Cal.Rptr.3d 450; *Building Industry* [*Assn. of San Diego County v. State Water Resources Control Board* (2004)] 124 Cal.App.4th [866,] 888–889, 22 Cal.Rptr.3d 128.)
>
> Reimbursement proceedings before the Commission are different. The question here was not whether the Regional Board had authority to impose the challenged requirements. It did. The narrow question here was who will pay for them. In answering that legal question, the Commission applied California's constitutional, statutory, and common law to the single issue of reimbursement. In the context of these proceedings, the State has the burden to show the challenged conditions were mandated by federal law.
>
> [¶…¶]
>
> Moreover, the policies supporting article XIII B of the California Constitution and section 6 would be undermined if the Commission were required to defer to the Regional Board on the federal mandate question.[209]

Here, the Regional Board is asserting that the Test Claim constitutes a collateral attack on the test claim permit, but *Department of Finance* shows that the courts understand the Commission's role to be distinct from a direct challenge on the merits of a stormwater permit: "[t]he narrow question here [is] who will pay" for an alleged mandate, which the Commission is charged with determining in the first instance.[210]

---

are executive orders pursuant to Government Code section 17516 and that the existence of a state mandate is a matter for the Commission's determination.

[209] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768-769.

[210] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 769.

4. The Regional Board's General Argument That the Permit Provisions Were Proposed by the Claimants in Their ROWD and Are Therefore Discretionary, Is Not Correct as a Matter of Law.

The Regional Board argues generally that because many of the permit provisions were proposed by the permittees in their 2007 permit application or Report of Waste Discharge (ROWD), the required activities are triggered by the permittees' discretionary decision to submit a permit application, and therefore reimbursement is not required.[211] The Commission disagrees.[212]

The claimants are required by law to submit an NPDES permit application in the form of a ROWD. Thus, submitting the ROWD is *not* discretionary, as shown in the following federal regulation:

> a) *Duty to apply.* (1) Any person[213] who discharges or proposes to discharge pollutants … and who does not have an effective permit … must submit a complete application to the Director in accordance with this section and part 124 of this chapter.[214]

Moreover, the ROWD (tantamount to an NPDES permit application) is required by California law, as follows: "Any person discharging pollutants or proposing to discharge pollutants to the navigable water of the United States within the jurisdiction of this state … shall file a report of the discharge in compliance with the procedures set forth in Section 13260 …"[215] In addition, federal law requires permittees to include in their permit application (ROWD) a proposed management program which covers the duration of the permit and "will be considered by the Director *when developing permit conditions* to reduce pollutants in discharges to the maximum extent practicable."[216]

---

[211] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 3-4, 12 ("The Permit does not require subvention for seven separate reasons…Third, the Permittees requested the Board to include most of the permit provisions for which they now seek subvention"), 17-18, 20, 24-25, 42.

[212] The Commission rejected the same argument in *Discharge of Stormwater Runoff*, 07-TC-09 (Commission on State Mandates, Test Claim Decision on *Discharge of Stormwater Runoff*, 07-TC-09, adopted March 26, 2010, https://csm.ca.gov/decisions/doc14.pdf (accessed on June 28, 2023), page 35.

[213] "Person" means an individual, association, partnership, corporation, *municipality*, State or Federal agency, or an agent or employee thereof. Code of Federal Regulations, title 40, section 122.2.

[214] Code of Federal Regulations, title 40, section 122.21(a). The section applies to U.S. EPA-issued permits but is incorporated by reference into section 123.25 (the state program provision).

[215] Water Code section 13376.

[216] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv) (emphasis added). See also, *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581 (quoting from *Department of Finance v. Commission on State*

Thus, it is ultimately the Regional Board that determines which conditions or requirements to include in an NPDES permit, and the argument that the ROWD proposal itself makes a permit requirement discretionary is incorrect as a matter of law. Rather, the Commission will interpret the permit requirements individually based on the plain language of the permit, the law, and the evidence in the record.

B. Some of the Permit Provisions Impose a State-Mandated New Program or Higher Level of Service.

1. The Requirements in Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the Test Claim Permit, to Develop and Revise a Local Implementation Plan Template and Jurisdiction-Specific Local Implementation Plans, Impose a State-Mandated New Program or Higher Level of Service. However, the Requirement in Section VII.D.3, to Implement Revised LIPs in Accordance with the Approved Modified BMP Implementation Schedule, Does Not Mandate a New Program or Higher Level of Service.

The claimants have pled Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VII.D.3, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the test claim permit pertaining to the Local Implementation Plan.[217] Section IV describes the Local Implementation Plan (LIP), and the other pled sections simply require the inclusion of specific program information in the LIP.

The claimants allege that "Section IV and other sections of the test claim permit" require the permittees "to undertake two significant and new tasks," as follows:

> [F]irst, the creation of a "template" "Local Implementation Plan" ("LIP"), that will be used to develop detailed documentation for each permittee's individual program to implement the Drainage Area Management Plan ("DAMP") and the requirements of the 2010 Permit, and second, the development of individual, permittee-specific LIP documents (based on the "template" LIP) that describe in detail individual permittee compliance programs. The LIP will be a comprehensive document, essentially documenting each permittee's efforts to comply with each provision of the 2010 Permit. It must, moreover, be regularly updated to reflect changes in the details of each permittee's compliance programs.[218]

Furthermore, the Test Claim characterizes the "mandated activities" as (1) developing a LIP template, (2) developing individual LIPs, and (3) updating the LIPs, and the

---

Mandates (2021) 59 Cal.App.5th 546, 561 (*Los Angeles Mandates II*), "Permittees '[did] not voluntarily participate' in applying for a permit to operate their stormwater drainage systems; they were required to do so under state and federal law and the challenged requirements were mandated by the Regional Board").

[217] Exhibit A, Test Claim, filed January 31, 2011, pages 33-37 (Test Claim narrative).

[218] Exhibit A, Test Claim, filed January 31, 2011, page 33 (Test Claim narrative).

supporting declarations similarly describe the LIP requirements as "create a template Local Implementation Plan," "develop individual LIPs," and "the review and periodic updating of those LIPs over the course of the Permit and continuing thereafter."[219]

Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. The claimants have pled requirements in Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VII.D.3, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A to develop a LIP template, develop the individual LIPs, and to revise the LIPs. However, these sections also contain additional activities outside the scope of the three LIP documentation activities which are not alleged or described in the Test Claim narrative or supporting declarations.

The Commission finds that the claimants have pled the requirements in Section IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VII.D.3, VIII.A, VIII.H, IX.C, IX.D[220], XII.A.1, XII.H, XIV.D, and XV.A of the test claim permit to develop a LIP template, develop individual LIPs, and to revise the LIPs. All other activities required by these sections are not pled as required by Government Code section 17553(b)(1) and are not analyzed herein.[221]

As described below, the Commission finds that Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the test claim permit mandate a new program or higher level of service for the following activities:

1. Within six months of adoption of the test claim permit, the permittees shall develop a LIP template and submit for approval of the executive officer. The LIP template shall be amended as the provisions of the DAMP are amended to address the requirements of the test claim permit. The LIP template shall facilitate a description of the co-permittee's individual programs to implement the DAMP, including the organizational units responsible for implementation and identify positions responsible for urban runoff program implementation. The

[219] Exhibit A, Test Claim, filed January 31, 2011, pages 38 (Test Claim narrative), 66, 74, 80, 86, 91-92, 97-98, 104, 110-111, 116-117 (supporting declarations).

[220] As noted in Section IV.B.3 of the Decision, the provision in Section IX.D to update the LIP based on any revisions to the IC/ID program pursuant to IX.D is analyzed herein as part of the test claim permit's LIP provisions.

[221] The one exception is Section VII.D.3, which the claimants have pled as requiring implementation of individual LIPs following certain revisions, as set forth in Section VII.D. Section VII.D.3 is fully analyzed herein.

description shall specifically address the items enumerated in Sections IV.A.1 through IV.A.12 of the test claim permit (Section IV.A).[222]

2. Within 12 months of approval of the LIP template, and amendments thereof, by the executive officer, each permittee shall complete a LIP, in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of the test claim permit (Section IV.B).[223]
3. Revise the LIP as necessary, following an annual review and evaluation of the effectiveness of the urban runoff programs, in compliance with Section VIII. H of the test claim permit (Section IV.C).[224]
4. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board (Section VI.D.1.a.vii).[225]
5. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no more than 180 days after the CBRP is approved by the Regional Board (Section VI.D.1.c.i(8)).[226]
6. Lake Elsinore/Canyon Lake permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon

---

[222] Exhibit A, Test Claim, filed January 31, 2011, pages 178-180 (test claim permit, Section IV.A).

[223] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.B).

[224] Exhibit A, Test Claim, filed January 31, 2011, page 181 (test claim permit, Section IV.C).

[225] Exhibit A, Test Claim, filed January 31, 2011, page 186 (test claim permit, Section VI.D.1.a.vii).

[226] Exhibit A, Test Claim, filed January 31, 2011, page 187 (test claim permit, Section VI.D.1.c.i(8)).

Lake (San Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit (Sections VI.D.2.c).[227]

7. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for the nutrients TMDL in the San Jacinto Watershed, no more than 180 days after the CNRP is approved by the Regional Board (Section VI.D.2.d.ii(d)).[228]
8. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f of the test claim permit (Section VI.D.2.i).[229]
9. The LIPs must be designed to achieve compliance with receiving water limitations associated with discharges of urban runoff to the MEP (Section VII.B).[230]
10. Within 30 days following approval by the executive officer of the report described in Section VII.D.1 of the test claim permit, the permittees shall revise the applicable LIPs to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required (Section VII.D.2).[231]

---

[227] Exhibit A, Test Claim, filed January 31, 2011, page 190 (test claim permit, Section VI.D.2.c; Section VI.D.2.i also requires the permittees to revise the LIP as necessary to implement the interim WQBEL compliance plans pursuant to Sections VI.D.2.a and b).

[228] Exhibit A, Test Claim, filed January 31, 2011, page 191 (test claim permit, Section VI.D.2.d.ii(d)).

[229] Exhibit A, Test Claim, filed January 31, 2011, page 192 (test claim permit, Section VI.D.2.i).

[230] Exhibit A, Test Claim, filed January 31, 2011, page 193 (test claim permit, Section VII.B).

[231] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.2).

11. The permittees shall incorporate their enforcement programs into the LIPs (Section VIII.A).[232]

12. The permittees shall update the LIPs following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit (Section VIII.H).[233]

13. The permittees shall describe their procedures and authorities for managing illegal dumping in the LIPs (Section IX.C).[234]

14. The permittees shall update the LIPs following their review of and revisions to their IC/ID programs to include a proactive IDDE program, as set forth in Section IX.D of the test claim permit (Section IX.D).[235]

15. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose (Section XII.A.1).[236]

16. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:

    a. The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.

    b. A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.

    c. Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.

---

[232] Exhibit A, Test Claim, filed January 31, 2011, page 195 (test claim permit, Section VIII.A).

[233] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section VIII.H).

[234] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section IX.C).

[235] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[236] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.1).

d. Training for those involved with WQMP reviews in accordance with Section XV of the test claim permit (Training Requirements) (Section XII.H).[237]

17. Each permittee shall include in its LIP the inspection and cleaning frequency for all portions of its MS4 (Section XIV.D).[238]

18. Within 24 months of adoption of the test claim permit, each permittee shall update their LIP to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit (Section XV.A).[239]

The requirement in Section VII.D.3, to implement revised LIPs in accordance with the approved modified BMP implementation schedule, is not new and thus, does not impose a new program or higher level of service.

a. Background

i. Federal law requires the permittees to have stormwater management programs but does not require those programs to impose controls on a jurisdictional basis.

Federal regulations require that the application for an NPDES permit contain a description of a proposed management program that covers the duration of the permit to be considered by the Regional Board when developing permit conditions to reduce pollutants in discharges to the MEP.[240] The proposed stormwater management program must address management practices; control techniques; and system, design, and engineering methods to reduce the discharge of pollutants to the maximum extent practicable.[241] The co-applicants are permitted, but not required, to submit separate proposed management programs, and management programs may impose controls on a systemwide, watershed, jurisdiction, or individual outfall basis.[242]

[237] Exhibit A, Test Claim, filed January 31, 2011, page 224 (test claim permit, Section XII.H).

[238] Exhibit A, Test Claim, filed January 31, 2011, page 229 (test claim permit, Section XIV.D).

[239] Exhibit A, Test Claim, filed January 31, 2011, pages 231-232 (test claim permit, Section XV.A).

[240] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[241] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[242] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

ii. Under the prior permit, the Drainage Area Management Plan (DAMP) served as the primary urban runoff management program document for the permittees, and the permittees were not required to have jurisdictional urban runoff management program documents.

Under the prior permit, the permittees implemented the urban runoff management program through the Drainage Area Management Plan (DAMP), which served as the primary urban runoff management program document in the Santa Ana and Santa Margarita Regions of Riverside County.[243] The DAMP translated the prior permit requirements into "the major programs and policies that the permittees individually and/or collectively develop and implement to manage urban runoff."[244] The overall purpose of the DAMP was to reduce pollutant loading to surface waters from urban stormwater runoff to the MEP.[245] The prior permit required the District, as the principal permittee, to manage the overall urban runoff program, including coordinating revisions to the DAMP, and to "[p]repare, coordinate the preparation of, and submit to the Executive Officer, those reports and programs necessary to comply with [the prior permit]."[246] The co-permittees were responsible for managing the urban runoff programs within their own jurisdictions and for implementing "management programs, monitoring and reporting programs, all BMPs listed in the DAMP, and related plans as required by this Order and tak[ing] such other actions as may be necessary to meet the MEP standard."[247]

b. Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the test claim permit mandate a new program or higher level of service by requiring the claimants to develop and revise a Local Implementation Plan template and jurisdiction-specific Local Implementation Plans.

Section IV of the test claim permit sets forth the general requirements pertaining to the "Local Implementation Plan" (LIP), which the permit defines as a "[d]ocument describing

---

[243] Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 3.

[244] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 3. Section XV.A.3 of the prior permit states: "The DAMP and amendments thereto are hereby made an enforceable part of this Order." Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011).

[245] Exhibit A, Test Claim, filed January 31, 2011, page 368 (Order No. R8-2002-0011, Finding 23).

[246] Exhibit A, Test Claim, filed January 31, 2011, pages 375-376 (Order No. R8-2002-0011, Section I(A)(1)).

[247] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)).

an individual Permittee's procedures, ordinances, databases, plans, and reporting materials for compliance with the MS4 Permit."[248]

Section IV.A requires the permittees to collectively develop a LIP template, which must be submitted to the Executive Officer for approval, and to amend the LIP template on an ongoing basis to reflect amendments to the DAMP.[249] While the test claim permit is silent as to who shall prepare the LIP template, the claimants assert that the District developed the LIP template on behalf of itself and the other permittees.[250] Section IV.A provides a detailed and extensive list of twelve categories of information that must be included in the LIP template, the purpose of which is to "facilitate a description of the Co-Permittee's individual programs to implement the DAMP," including identifying the organization units and positions responsible for urban runoff program implementation.[251] Section IV.B requires each permittee to complete an individual LIP document in conformance with the LIP template.[252] Thus, the LIP template is a Regional Board-approved document that identifies the categories of information that the permittees must include in their individual LIPs; and the individual LIPs are jurisdiction-specific documents that describe in detail how each permittee will implement the various urban runoff management program components required under the test claim permit. Section IV.C requires the permittees to determine whether revisions to the LIP are necessary, based on an annual program effectiveness evaluation, and to document revisions to the LIP in the annual report.[253] The claimants have also pled additional sections of the test claim permit as requiring them to revise or amend their individual LIPs, which are discussed below.[254]

The LIP template categories in Section IV.A largely reflect the major components of the test claim permit that the permittees are required to implement through their urban runoff management programs, with ordinances, agreements, plans, policies, procedures, and tools referenced where relevant. Section IV.A.1 requires the permittees to include in the LIP template a description of overall program management, including internal reporting requirements and procedures for communication and accountability; interagency or interdepartmental agreements necessary to implement

---

[248] Exhibit A, Test Claim, page 133 (test claim permit, Appendix 4 [Glossary]).

[249] Exhibit A, Test Claim, filed January 31, 2011, page 178.

[250] Exhibit A, Test Claim, filed January 31, 2011, page 38 (Test Claim narrative ["The development of that template LIP is being done by the District on behalf of itself and the permittees, and the funding for that work is being shared by the permittees pursuant to their joint Implementation Agreement"]).

[251] Exhibit A, Test Claim, filed January 31, 2011, pages 178-180.

[252] Exhibit A, Test Claim, filed January 31, 2011, page 180-181 (test claim permit, Section IV).

[253] Exhibit A, Test Claim, filed January 31, 2011, pages 180-181 (test claim permit, Section IV).

[254] Exhibit A, Test Claim, filed January 31, 2011, pages 36-37 (Test Claim narrative).

the permittee's urban runoff program; a summary of fiscal resources available to implement the urban runoff program; the ordinances, agreements, plans, policies, procedures and tools (e.g. checklists, forms, educational materials, etc.) used to execute the DAMP, including legal authorities and enforcement tools; a summary of procedures for maintaining databases required by the test claim permit; and a description of internal procedures to ensure and promote accountability.[255]

Section IV.A.2 requires the permittees to include in the LIP template the water quality based effluent limitations (WQBELs) to implement the TMDLs, which are set forth in Section VI.D. Prior to adoption of the test claim permit, TMDLs were adopted for Bacteria Indicator in the Middle Santa Ana River watershed and for nutrients in the Lake Elsinore and Canyon Lake watersheds.[256] The Fact Sheet explains that the test claim permit "includes conditions necessary to implement TMDLs already approved by the Regional Board as required by federal regulations at 40 CFR 122.44(d)(vii)(B)" and "incorporates the WLAs as Water Quality-Based Effluent Limitations (WQBEL) and requires Permittees to achieve the WLA for Urban Runoff through an iterative process of implementing BMPs."[257] As set forth in the test claim permit findings, federal law requires NPDES permits to include WQBELs to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water.[258] Section VI.D.1 contains the interim and final WQBELs for the Middle Santa Ana River watershed Bacteria Indicator TMDL and the Lake Elsinore/Canyon Lake watershed Nutrient TMDLs.[259] While Section VI.D requires the Middle Santa Ana River and Lake Elsinore/Canyon Lake permittees to perform various TMDL and WQBEL compliance activities, the permittees have pled the following sections as specific to revising their individual LIPs:[260]

---

[255] Exhibit A, Test Claim, filed January 31, 2011, page 178 (test claim permit, Section IV.A.1).

[256] On August 26, 2005, the Regional Board adopted Resolution No. RB-2005-001 amending the Basin Plan to incorporate Bacterial Indicator TMDL for Middle Santa Ana River watershed, and on December 20, 2004, the Regional Board adopted resolution RB-2004-0037 amending the Basin Plan to incorporate the Lake Elsinore and Canyon Lake nutrient TMDLs. Exhibit A, Test Claim, filed January 31, 2011, page 317 (test claim permit, Appendix 6 [Fact Sheet]).

[257] Exhibit A, Test Claim, filed January 31, 2011, page 317 (test claim permit, Appendix 6 [Fact Sheet]).

[258] Exhibit A, Test Claim, filed January 31, 2011, page 160 (Section II.K), citing Code of Federal Regulations, title 40, section 122.44(d).

[259] Exhibit A, Test Claim, filed January 31, 2011, pages 185-194 (test claim permit, Section VI).

[260] Exhibit A, Test Claim, filed January 31, 2011, pages 35-36 (Test Claim narrative).

- Middle Santa Ana River permittees[261] shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board.[262]
- Middle Santa Ana River permittees shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no more than 180 days after the CBRP is approved by the Regional Board.[263]
- Lake Elsinore/Canyon Lake permittees[264] shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon Lake (San Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit.[265]
- Lake Elsinore/Canyon Lake Permittees shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for

[261] The permittees who must comply with the Middle Santa Ana River TMDL are Riverside County, and the Cities of Corona, Norco, and Riverside. Exhibit A, Test Claim, filed January 31, 2011, page 185, (test claim permit, Section VI.D.1.a, footnote 34). While footnote 34 does *not* list the Riverside County Flood Control & Water Conservation District as a Middle Santa Ana River permittee, the referenced Table 5 does. See Exhibit A, Test Claim, filed January 31, 2011, page 149 (test claim permit, Section II.F.8, Table 5).

[262] Exhibit A, Test Claim, filed January 31, 2011, page 186 (test claim permit, Section VI.D.1.a.vii).

[263] Exhibit A, Test Claim, filed January 31, 2011, page 187 (test claim permit, Section VI.D.1.c.i(8)).

[264] The permittees who must comply with the Lake Elsinore/Canyon Lake Nutrient TMDL are: Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar. Exhibit A, Test Claim, filed January 31, 2011, pages 151-152 (test claim permit).

[265] Exhibit A, Test Claim, filed January 31, 2011, page 190 (test claim permit, Section VI.D.2.c; Section VI.D.2.i. also requires the permittees to revise the LIP as necessary to implement the interim WQBEL compliance plans pursuant to Sections VI.D.2.a and b).

the nutrients TMDL in the San Jacinto Watershed no more than 180 days after the CNRP is approved by the Regional Board.[266]

- Lake Elsinore/Canyon Lake Permittees shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f.[267]

Section IV.A.3 requires the permittees to include in their LIP template the receiving water limitations set forth in Section VII.D. The test claim permit defines "receiving water limitations" as "[r]equirements included in the Orders issued by the Regional Boards to assure that the regulated discharges do not violate Water Quality Standards established in the Basin Plan at the point of discharge to Waters of the U.S."[268] Section VII.D sets forth required procedures that are triggered if exceedances of water quality standards persist notwithstanding implementation of the DAMP and other permit requirements.[269] Specifically, if it is determined that discharges from the MS4 are causing or contributing to an exceedance of applicable water quality standards, the permittees are required to submit a report to the Regional Board describing implementation of current and additional BMPs to prevent or reduce the pollutants causing or contributing to the exceedance, as well as an implementation schedule.[270] Following approval of the report, the permittees are required to revise their LIPs. The permittees have pled the following Section VII.D activities as specific to their individual LIPs:

- Section VII.D.2. "Within 30 days following approval by the Executive Officer of the report described above, the Permittees shall revise…applicable LIPs… to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required."[271]

---

[266] Exhibit A, Test Claim, filed January 31, 2011, page 191 (test claim permit, Section VI.D.2.d.ii(d)).

[267] Exhibit A, Test Claim, filed January 31, 2011, page 192 (test claim permit, Section VI.D.2.i).

[268] Exhibit A, Test Claim, filed January 31, 2011, page 288 (test claim permit, Appendix 4 [Glossary]).

[269] Exhibit A, Test Claim, filed January 31, 2011, pages 194-195 (test claim permit, Section VII.D).

[270] Exhibit A, Test Claim, filed January 31, 2011, pages 194-195 (test claim permit, Section VII.D.1.).

[271] Exhibit A, Test Claim, filed January 31, 2011, pages 36 (Test Claim narrative), 194 (test claim permit, Section VII.D.2).

- Section VII.D.3. Implement the applicable revised LIPs in accordance with the approved modified BMP implementation schedule set forth in Section VII.D of the test claim permit.[272]

The claimants have also pled the portion of Section VII.B which states that the individual LIPs must be designed to achieve compliance with receiving water limitations association with discharges of urban runoff to the MEP.[273]

Section IV.A.4 requires the LIP template to include legal authority and enforcement procedures as set forth in Section VIII, including actions and procedures for tracking return to compliance.[274] Section VIII requires the permittees to maintain adequate legal authority to allow them to carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with their ordinances and the permit, and to allow them to require BMPs to be used to the MEP.[275] The claimants have also pled the following Section VIII activities as part of drafting and revising their individual LIPs:

- Section VIII.A. The permittees shall incorporate the enforcement program into their LIP.[276]
- Section VIII.H. The permittees shall update the LIP following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit.[277]

Section IV.A.5 requires the permittees to include in the LIP template the illicit connections and illegal discharges (IC/ID) program set forth in Section IX, including the procedures and the staff positions responsible for the different components of their IC/ID and Illegal Discharge Detection and Elimination (IDDE) Programs. Additionally, the permittees have pled Sections IX.C and IX.D as requiring them to draft and revise their individual LIPs to include the following information:

---

[272] Exhibit A, Test Claim, filed January 31, 2011, pages 36 (Test Claim narrative), 194 (test claim permit, Section VII.D.3).

[273] Exhibit A, Test Claim, filed January 31, 2011, pages 36 (Test Claim narrative), 193 (test claim permit, Section VII.B).

[274] Exhibit A, Test Claim, filed January 31, 2011, page 179 (test claim permit, Section IV.A.4).

[275] Exhibit A, Test Claim, filed January 31, 2011, page 195 (test claim permit, Section VIII.A).

[276] Exhibit A, Test Claim, filed January 31, 2011, pages 36 (Test Claim narrative), 195 (test claim permit, Section VIII.A).

[277] Exhibit A, Test Claim, filed January 31, 2011, pages 36 (Test Claim narrative), 198 (test claim permit, Section VIII.H).

- Section IX.C. The permittees shall describe their procedures and authorities for managing illegal dumping in their LIP.[278]
- Section IX.D. "Within 18 months of adoption of this Order, the Permittees shall review and revise their IC/ID program to include a pro-active IDDE using the Guidance Manual for Illicit discharge detection and elimination by the Center for Watershed Protection or any other equivalent program consistent with Section IX.E below. The result of this review shall be reported in the Annual Report and include a description of the Permittees' revised pro-active program, procedures and schedules. *The LIP shall be updated accordingly*."[279]

Section IV.A.6 requires the permittees to include in their LIP template the sewage spills and infiltration element contained in Section X, including a description of the interagency or interdepartmental sewer spill response coordination within each permittee's jurisdiction.[280]

Section IV.A.7 requires the permittees to include in the LIP template the co-permittee inspection programs contained in Section XI, including maintenance of construction, industrial, commercial, and post-construction BMP databases; procedures for incorporating erosion and sediment control BMPs into the permitting of construction sites, as specified in Section XI.B; implementation of the residential program, as specified in Section XI.E; and the procedures and tools used to verify coverage under the General Construction Permit.[281]

Section IV.A.8 requires the permittees to include in the LIP template the following information pertaining to the new development and significant redevelopment project requirements specified in Section XII of the permit: a list of discretionary maps and permits over which the permittee has the authority to require WQMPs; procedures to implement the Hydromodification Management Plan; procedures and tools to implement the WQMP, as set forth in Sections XII.H, XII.I and XII.K; procedures for municipal road projects, as set forth in Section XII.F, and a description of the credits program or other in-lieu programs implemented, as specified in Section XII.G.[282] In addition, the

---

[278] Exhibit A, Test Claim, filed January 31, 2011, page 37 (Test Claim narrative), 198 (test claim permit, Section IX.C).

[279] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D), emphasis added.

[280] Exhibit A, Test Claim, filed January 31, 2011, page 179 (test claim permit, Section IV.A.6).

[281] Exhibit A, Test Claim, filed January 31, 2011, page 179 (test claim permit, Section IV.A.7).

[282] Alternatives and other in-lieu programs may be approved when the feasibility of implementing LID BMPs is at issue and a project developer is seeking a waiver. A "credits program" refers to a water quality credit system for alternatives to the infiltration, harvesting and use, evapotranspiration and other LID and Hydromodification requirements specified in the test claim permit that the permittees are permitted to

permittees have pled Sections XII.A.1 and XII.H as requiring the permittees to draft or revise their individual LIPs to include the following specific information:

- Section XII.A.1. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose.[283]
- Section XII.H. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:

  1. The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.

  2. A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.

  3. Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.

  4. Training for those involved with WQMP reviews in accordance with Section XV, Training Requirements.[284]

Section IV.A.9 requires the permittees to include in the LIP template the public education and outreach requirements specified in Section XIII.[285]

Section IV.A.10 requires the permittees to include in the LIP template a description of the permittees facilities and activities as set forth in Section XIV, including a description of the permittees' MS4 facilities (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural drainage features or channels, modified natural channels, man-made channels, or storm drains)[286] and a list of facilities that at a minimum include: parking facilities; firefighting training facilities; firefighting training facilities; facilities and activities discharging directly to environmentally sensitive areas such as 303(d) listed waterbodies or those with a RARE beneficial use

---

establish where feasible and practicable. Exhibit A, Test Claim, filed January 31, 2011, page 223 (test claim permit, Section XII.G.4).

[283] Exhibit A, Test Claim, filed January 31, 2011, pages 37 (Test Claim narrative), 208 (test claim permit, Section XII.A.1).

[284] Exhibit A, Test Claim, filed January 31, 2011, pages 37 (Test Claim narrative), 224 (test claim permit, Section XII.H).

[285] Exhibit A, Test Claim, filed January 31, 2011, page 179 (test claim permit, Section IV.A.9).

[286] Exhibit A, Test Claim, filed January 31, 2011, page 284 (test claim permit, Appendix 4 [Glossary]).

designation; POTWs (including water and wastewater treatment plants) and sanitary sewage collection systems; solid waste transfer facilities; land application sites; corporate yards including maintenance and storage yards for materials, waste, equipment and vehicles; household hazardous waste collection facilities; municipal airfields; maintenance facilities serving parks and recreation facilities; special event venues following special events (festivals, sporting events); and other municipal areas and activities that the permittee determines to be a potential source of pollutants.[287]

The claimants have also pled the portion of Section XIV.D that requires them to include the inspection and cleaning frequency for all portions of the specified MS4 in their individual LIPs.[288]

Section IV.A.11 requires the LIP template to include permittee facility and activity compliance with the General Construction Permit and De-Minimus Permit, as set forth in Section XIV.G.[289]

Section IV.A.12 requires the permittees to include in the LIP template the employee training program for storm water managers, planner, inspectors, and municipal contractors, as set forth in Section XV, including training log forms and identification of departments and positions requiring training.[290] Additionally, the permittees have pled the portion of Section XV.A that requires them to revise their individual LIPs as follows:

- Within 24 months of adoption of the test claim permit, each permittee's LIP shall be updated to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit.[291]

    i. Section IV imposes new requirements on the permittees to develop and revise a LIP template and jurisdiction-specific individual LIPs, and Sections VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A require the permittees to include specific information in their individual LIPs.

The test claim permit explains that the requirements to create a LIP template and individual LIPs are new and resulted from a determination by the Regional Board that

---

[287] Exhibit A, Test Claim, filed January 31, 2011, pages 179-180 (test claim permit, Section IV.A.10).

[288] Exhibit A, Test Claim, filed January 31, 2011, pages 37 (Test Claim narrative), 229 (test claim permit, Section XIV.D).

[289] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.A.11).

[290] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.A.12).

[291] Exhibit A, Test Claim, filed January 31, 2011, pages 37 (Test Claim narrative), 231-232 (test claim permit, Section XV.A).

most of the permittees had not sufficiently documented their policies and procedures for implementing their urban runoff management programs:

> During the Third Term Permit, Regional Board staff conducted an evaluation of each of the Permittees' Urban Runoff programs. This evaluation indicated that most of the Permittees lacked proper documentation of procedures and policies for implementation of various elements of their Urban Runoff program. This Order requires each Permittee to develop a Local Implementation Plan (LIP) that documents its internal procedures for implementation of the various program elements described in the DAMP and this Order.[292]

According to the Regional Board, "the Santa Ana Water Board included provisions requiring each Permittee to create an individual stormwater management program, or "Local Implementation Plan" ("LIP"), to facilitate better implementation" of the Drainage Area Management Plan (DAMP) based on guidance from U.S. EPA and in response to program audits conducted by the Regional Board and U.S. EPA contractors.[293] From the Regional Board:

> In 2004, Tetra Tech, Inc. ("Tetra Tech"), with assistance from the Santa Ana Water Board, conducted a MS4 program evaluation of three of the Permittees. Following the audit, Tetra Tech prepared a Program Evaluation Report that identified potential permit violations, program deficiencies, and positive attributes. A significant deficiency identified by the Program Evaluation Report was that the cities had not yet developed city-specific local stormwater management plans. More specifically, the Report noted:
>
> > Although the Permittees have developed the regional DAMP, *they have not developed individual stormwater implementation plans* to provide each city with specific direction on the implementation of the Program. Review of the DAMP demonstrated that it is general in nature, providing guidance for the Permittees but not specific details regarding local implementation. *The Permittees should develop individual stormwater management plans, based on the DAMP's overall guidance and program objectives that describe specifically how the program will be implemented in each municipality*. The cities would benefit from developing individual plans that identify the specific city organization(s) responsible for each activity. The local stormwater management plans should not only identify activities specific

[292] Exhibit A, Test Claim, filed January 31, 2011, page 133 (Order No. R8-2010-0033).

[293] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 21.

> to the city but also provide the detailed direction and guidance needed to implement these activities.[294]

As noted by the Regional Board, this finding was consistent with results from Tetra Tech's larger statewide audit of 36 municipal stormwater management programs, which found that "programs with more specific permit requirements generally result in more comprehensive and progressive stormwater management programs" and recommended that permits include "a requirement that a single planning document or a series of component-specific documents be developed that describe implementation procedures, BMPs, schedules, responsibilities, and goals."[295]

While the Water Boards concede that the claimants were not previously required to develop a LIP template, they argue that developing and revising individual, jurisdiction-specific LIPs "merely require permittees to document the ongoing implementation of existing Test Claim Permit programs," and therefore do not impose a state-mandated new program or higher level of service.[296] And if the Commission disagrees, they urge it to find that the costs to comply are de minimis.[297]

The Commission finds that the test claim permit imposes new requirements on the permittees to develop and revise a LIP template; to complete individual, jurisdiction-specific LIPs based on the LIP template; and to revise the individual LIPs as necessary based on the results of the annual review and evaluation of the effectiveness of the urban runoff management programs.

Federal law requires an NPDES permit application to include a proposed stormwater management program to address discharges from the MS4 system, and allows for controls to be implemented on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.[298] Under the prior permit, the Drainage Area Management Plan (DAMP) served as the primary programmatic document for managing urban runoff for the permittees, and the permittees used the DAMP to develop their own individual ordinances, plans, policies, and procedures to manage urban runoff.[299] The prior permit required the District, as principal permittee, to manage the overall urban runoff management program, including coordinating revisions to the

---

[294] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 22-23.

[295] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 23, footnote 111.

[296] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, page 2.

[297] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, page 2.

[298] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[299] Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 3.

DAMP, and to "[p]repare, coordinate the preparation of, and submit to the Executive Officer, those reports and programs necessary to comply with [the prior permit]."[300] The co-permittees were responsible for managing the urban runoff programs within their own jurisdictions and for implementing "management programs, monitoring and reporting programs, all BMPs listed in the DAMP, and related plans as required by this Order and tak[ing] such other actions as may be necessary to meet the MEP standard."[301]

According to the DAMP, "[i]n addition to the descriptions of program elements contained within the DAMP, each Permittee maintained documentation of their internal procedures for implementation of the program elements described in the DAMP," including their IC/ID enforcement and compliance prioritization and response programs; policies and procedures for planning and design of permittee projects subject to the Water Quality Management Plan (WQMP); operation and maintenance schedules for the MS4; CEQA project application forms and initial study checklists; procedures for implementing development review, approval, and permitting; and construction site, industrial facility, and commercial facility inspection programs, databases, and inspection checklists.[302]

Notably, however, while the prior permit required each co-permittee to implement the urban runoff management program within its jurisdiction, it did *not* require the permittees to do so by developing a written implementation plan containing all applicable internal policies and procedures required under the prior permit.

Thus, while federal law requires an urban runoff management program, it authorizes but does not require the controls comprising that program to be implemented on a jurisdictional basis.[303] Under the prior permit, the Regional Board satisfied this requirement through the DAMP, which the permittees were required to implement within their jurisdictions.[304] While the Water Boards allege that *documenting* ongoing implementation activities on a jurisdictional basis does not require anything new of the permittees,[305] the prior permit fell short of requiring the permittees to draft individual

---

[300] Exhibit A, Test Claim, filed January 31, 2011, pages 375-376 (Order No. R8-2002-0011, Section I(A)(1)).

[301] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)).

[302] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 4. According to the DAMP, these documents are reviewed and updated as necessary to keep up with changes within the permittees' jurisdictions and with changing local, state and federal regulations.

[303] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[304] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)).

[305] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, page 2.

stormwater management program implementation planning documents describing specifically how they implement the management programs within their jurisdictions. Therefore, neither federal law nor the prior permit required the permittees to develop individual, jurisdiction-specific plans for implementing their urban runoff management programs or to develop a template for creating those plans.

Thus, Section IV of the test claim permit imposes new requirements on the permittees to develop and revise a LIP template; to complete individual, jurisdiction-specific LIPs based on the LIP template; and to revise the individual LIPs as necessary based on the results of the annual review and evaluation of the effectiveness of the urban runoff management programs. Furthermore, because each permittee is newly required to complete an individual LIP based on the template, the additional requirements in Sections VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A, to include specific information in the individual LIPs, are also new.

ii. The new requirements imposed by Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A are mandated by the state and impose a new program or higher level of service.

The Regional Board does not dispute that the LIP requirements at issue are new, but rather argues that they are necessary to remedy an identified deficiency under the prior permit and are therefore necessary to meet the federal MEP standard.[306] The Regional Board also asserts that because the permittees recommended adding the LIP provisions the test claim permit, they cannot now assert "that these provisions are somehow impracticable and exceed the federal minimum MEP standard."[307]

In the 2016 decision of *Department of Finance v. Commission on State Mandates*, the California Supreme Court identified the following test to determine whether certain conditions imposed by an NPDES permit were mandated by the state or the federal government:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[308]

The court also held that if the state, in opposition, contends its requirements are federal mandates, the state has the burden of establishing that the requirements are mandated

---

[306] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 23-24.

[307] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 24-25.

[308] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

by federal law.[309] The courts have also explained that "except where a regional board finds the conditions are the only means by which the [federal] 'maximum extent practicable' standard can be met, the state exercises a true choice by determining what controls are necessary to meet the standard."[310] "That the San Diego Regional Board found the permit requirements were 'necessary' to meet the standard establishes only that the San Diego Regional Board exercised its discretion."[311]

Thus, *Department of Finance v. Commission on State Mandates* requires the Commission to analyze whether each disputed permit term (i.e., each requirement) is expressly required by federal law or, alternatively, is required to reduce pollutants to the maximum extent practicable. The Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[312]

Here, the Regional Board's position that the LIP requirements are necessary to meet the federal "maximum extent practicable" (MEP) standard due to identified deficiencies in the urban runoff management program is unconvincing. There is nothing in federal law that is sufficiently specific as to require the new LIP requirements. The federal regulations expressly state that separate proposed stormwater management programs *may* (not must) be submitted by each coapplicant, and programs *may* (not must) impose controls on a "systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls."[313] Thus, there is no requirement under federal law for each permittee to develop a jurisdiction-specific stormwater management program implementation plan.[314] Instead, as the Regional Board acknowledges, the DAMP is the "federally mandated programmatic document" which "translates MS4 permit requirements into implementable programs."[315] Nor is there evidence in the record showing that

---

[309] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 769.

[310] *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, 682, citing *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768.

[311] *Department of Finance v. Commission on State Mandates* (2017) 18 Cal.App.5th 661, 682.

[312] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[313] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[314] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 21-23.

[315] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 21.

developing individual LIPs for each jurisdiction is the only means by which the federal MEP standard can be met. Instead, the Regional Board exercised a true choice by determining that the LIP requirements are necessary to meet the MEP standard.

Therefore, the Commission finds that the new activities required by Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A are mandated by the state.

Additionally, the Commission finds that these state-mandated activities impose a new program or higher level of service. "New program or higher level of service" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[316] Only one of these alternatives is required to establish a new program or higher level of service.[317]

Here, the newly mandated LIP requirements are uniquely imposed on local government, and are intended to facilitate better implementation of the DAMP by translating the permit requirements into programs and implementation plans aimed to reduce the discharge of pollutants to the MS4.[318] Therefore, the requirements are uniquely imposed on the local government permittees, and provide a governmental service to the public.

Accordingly, Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A of the test claim permit impose a state-mandated new program or higher level of service on the claimants to perform the following activities:

1. Within six months of adoption of the test claim permit, the permittees shall develop a LIP template and submit for approval of the executive officer. The LIP template shall be amended as the provisions of the DAMP are amended to address the requirements of the test claim permit. The LIP template shall facilitate a description of the co-permittee's individual programs to implement the DAMP, including the organizational units responsible for implementation and identify positions responsible for urban

---

316 *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

317 *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

318 Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 23. See also Exhibit A, Test Claim, filed January 31, 2011, pages 178-180 (test claim permit, Section IV.A ["The LIP template shall facilitate a description of the Co-Permittee's individual programs to implement the DAMP"]); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 3.

runoff program implementation. The description shall specifically address the items enumerated in Sections IV.A.1 through IV.A.12 of the test claim permit (Section IV.A).[319]

2. Within 12 months of approval of the LIP template, and amendments thereof, by the executive officer, each permittee shall complete a LIP, in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of the test claim permit (Section IV.B).[320]
3. Revise the LIP as necessary, following an annual review and evaluation of the effectiveness of the urban runoff programs, in compliance with Section VIII.H of the test claim permit (Section IV.C).[321]
4. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board (Section VI.D.1.a.vii).[322]
5. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no more than 180 days after the CBRP is approved by the Regional Board (Section VI.D.1.c.i(8)).[323]
6. Lake Elsinore/Canyon Lake permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon Lake (San

[319] Exhibit A, Test Claim, filed January 31, 2011, pages 178-180 (test claim permit, Section IV.A).

[320] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.B).

[321] Exhibit A, Test Claim, filed January 31, 2011, page 181 (test claim permit, Section IV.C).

[322] Exhibit A, Test Claim, filed January 31, 2011, page 186 (test claim permit, Section VI.D.1.a.vii).

[323] Exhibit A, Test Claim, filed January 31, 2011, page 187 (test claim permit, Section VI.D.1.c.i(8)).

Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit (Sections VI.D.2.c).[324]

7. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for the nutrients TMDL in the San Jacinto Watershed, no more than 180 days after the CNRP is approved by the Regional Board (Section VI.D.2.d.ii(d)).[325]
8. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f of the test claim permit (Section VI.D.2.i).[326]
9. The LIPs must be designed to achieve compliance with receiving water limitations associated with discharges of urban runoff to the MEP (Section VII.B).[327]
10. Within 30 days following approval by the executive officer of the report described in Section VII.D.1 of the test claim permit, the permittees shall revise the applicable LIPs to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required (Section VII.D.2).[328]

---

[324] Exhibit A, Test Claim, filed January 31, 2011, page 190 (test claim permit, Section VI.D.2.c; Section VI.D.2.i also requires the permittees to revise the LIP as necessary to implement the interim WQBEL compliance plans pursuant to Sections VI.D.2.a and b)).

[325] Exhibit A, Test Claim, filed January 31, 2011, page 191 (test claim permit, Section VI.D.2.d.ii(d)).

[326] Exhibit A, Test Claim, filed January 31, 2011, page 192 (test claim permit, Section VI.D.2.i).

[327] Exhibit A, Test Claim, filed January 31, 2011, page 193 (test claim permit, Section VII.B).

[328] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.2).

11. The permittees shall incorporate their enforcement programs into the LIPs (Section VIII.A).[329]
12. The permittees shall update the LIPs following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit (Section VIII.H).[330]
13. The permittees shall describe their procedures and authorities for managing illegal dumping in the LIPs (Section IX.C).[331]
14. The permittees shall update the LIPs following their review of and revisions to their IC/ID programs to include a proactive IDDE program, as set forth in Section IX.D of the test claim permit (Section IX.D).[332]
15. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose (Section XII.A.1).[333]
16. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:
    - The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.
    - A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.
    - Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.

[329] Exhibit A, Test Claim, filed January 31, 2011, page 195 (test claim permit, Section VIII.A).

[330] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section VIII.H).

[331] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section IX.C).

[332] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[333] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.1).

- Training for those involved with WQMP reviews in accordance with Section XV of the test claim permit (Training Requirements) (Section XII.H).[334]

17. Each permittee shall include in its LIP the inspection and cleaning frequency for all portions of its MS4 (Section XIV.D).[335]
18. Within 24 months of adoption of the test claim permit, each permittee shall update their LIP to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit (Section XV.A).[336]

c. Implementation of the applicable LIPs under Section VII.D.3 is not new and does not impose a new program or higher level of service.

The claimants also contend that Section VII.D.3 of the test claim permit imposes a new requirement on the co-permittees to *implement* revised jurisdiction-specific LIPs that incorporate approved modified BMPs created in response to persistent exceedances of water quality standards.[337]

As discussed above, if it is determined that discharges from the MS4 are causing or contributing to an exceedance of applicable water quality standards, the permittees are required by Section VII.D.1. to submit a report that describes implementation of current and additional BMPs to prevent or reduce those pollutants, including an implementation schedule.[338] Upon approval of that report by the executive officer, Section VII.D.2 requires the permittees to "revise the DAMP, applicable LIPs, and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required."[339] Section VII.D.3 – the provision at issue – then requires implementation of those revised plans

[334] Exhibit A, Test Claim, filed January 31, 2011, page 224 (test claim permit, Section XII.H).

[335] Exhibit A, Test Claim, filed January 31, 2011, page 229 (test claim permit, Section XIV.D).

[336] Exhibit A, Test Claim, filed January 31, 2011, pages 231-232 (test claim permit, Section XV.A).

[337] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 6-7; Exhibit A, Test Claim, filed January 31, 2011, pages 194-195 (test claim permit, Section VII.D).

[338] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.1).

[339] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.2).

and program, including applicable LIPs: "Implement the revised DAMP, *applicable LIPs* and monitoring program in accordance with the approved schedule."[340]

Characterizing the LIP as "an entirely new program," the claimants reason that because the prior permit did not require the development of a LIP, "[i]t thus makes no logical sense that the Test Claim Permit requirement to *implement* a revised LIP was not also 'new.'"[341] The claimants further assert that the prior permit requirement to meet water quality standards is irrelevant to whether Section VII.D.3 imposes new requirements, citing *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559 for the proposition that the application of article XIII B, section 6 "does not turn on whether the underlying obligations to abate pollution remain the same" but rather whether the test claim permit requires the permittees to provide a new program or higher level of existing services, even if "the [new] conditions were designed to satisfy the same standard of performance" in the prior permit.[342] Here, the claimants assert, the test claim permit added requirements to implement the revised LIPs that did not exist in the prior permit, and "[e]ven if those requirements were intended to meet the same standard of performance…they were still 'new'" and also constituted a higher level of service because they were more comprehensive than those in the prior permit.[343]

However, implementing the applicable revised LIPs as required by Section VII.D.3 is not new.[344] Under the prior permit, the permittees were already required to "implement management programs, monitoring and reporting programs, all BMPs listed in the DAMP, and related plans" and to "take such other actions as may be necessary to meet the MEP standard."[345] If the permittees detected an exceedance of water quality standards, they were required to "revise the DAMP and their monitoring and reporting programs to incorporate the approved modified or additional BMPs that have been or are to be implemented, and the implementation schedule."[346] The prior permit also required the permittees to "demonstrate compliance with all the requirements in this Order," including Section II. Discharge Limitations/Prohibitions and Section III.

---

[340] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.3), emphasis added.

[341] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 7, emphasis in original.

[342] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 7.

[343] Exhibit N, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 7.

[344] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.3).

[345] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)).

[346] Exhibit A, Test Claim, filed January 31, 2011, page 381 (Order No. R8-2002-0011, Section III.D.4).

Receiving Water Limitations, to "implement their DAMP and modifications, revisions, or amendments thereto, which are developed pursuant to this Order or determined by the Permittees to be necessary to meet the requirements of this Order and approved by the Executive Officer," and to "continue to implement necessary controls, in addition to those specific controls and actions required by (1) the terms of this Order and (2) the DAMP, to reduce the discharge of pollutants in Urban Runoff to the MEP."[347]

Thus, both the prior permit and test claim permit require the permittees to revise their urban runoff management program *implementation* documents "to incorporate the approved modified BMPs that have been and will be implemented" and to implement those BMPs.[348] As such, the requirement in Section VII.D.3, to implement the LIPs that were revised to incorporate the approved modified BMPs, simply reflects the preexisting duty to implement modified BMPs to prevent or reduce pollutants that are causing or contributing to an exceedance of receiving water quality standards. The fact that the modified BMPs must now also be included in the LIP documents does not change the fact that the activity of *implementing* those BMPs was already required under the prior permit.[349]

Furthermore, the claimant's reliance on *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 in this context is misplaced. There, the court's determination that the "application of Section 6, however, does not turn on whether the underlying obligation to abate pollution remains the same" was in response to arguments raised by the State that a permit condition that did not exist in prior permits was not new because it did not increase the preexisting obligation of the permittees to eliminate or reduce the discharge of pollutants from their MS4s to the MEP, but rather ensured compliance with that standard.[350] In rejecting the State's position, the court explained:

---

[347] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A).

[348] Compare Exhibit A, Test Claim, filed January 31, 2011, pages 381-382 (Order No. R8-2002-0011, Section III.D ["4. …the Permittees shall revise the DAMP and their monitoring and reporting programs to incorporate the approved modified or additional BMPs that have been or are to be implemented…5. The revised DAMP and monitoring program are to be implemented in accordance with the approved schedule"]) and Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D ["2. …the Permittees shall revise the DAMP, the applicable LIPs, and monitoring program to incorporate the approved modified BMPs that have been and will be implemented…3. Implement the revised DAMP, applicable LIPs and monitoring program..."]).

[349] Exhibit A, Test Claim, filed January 31, 2011, pages 378 (Order No. R8-2002-0011, Section I.B.1), 381-382 (Order No. R8-2002-0011, Section III.D).

[350] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559.

> To determine whether a program imposed by the permit is new, we compare the legal requirements imposed by the new permit with those in effect before the new permit became effective. (See *San Diego Unified*, *supra*, 33 Cal.4th at p. 878, 16 Cal.Rptr.3d 466, 94 P.3d 589; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318.) This is so even though the conditions were designed to satisfy the same standard of performance."[351]

The court went on to conclude that the permit conditions at issue imposed new requirements "when compared to the prior permit."[352]

Here, as discussed above, the prior permit already required the permittees to implement the approved modified BMPs contained in the revised DAMP and monitoring and reporting programs.[353] The fact that modified BMPs are also enumerated in applicable LIPs does not change the fact that implementation of the approved modified BMPs was a preexisting requirement.[354] Nor does the fact that the purpose underlying the modified BMP implementation activities in both the prior and test claim permit is to "prevent or reduce those pollutants that are causing or contributing to the exceedance of the applicable water quality standards."[355]

Therefore, implementation of the applicable LIPs under Section VII.D.3 is not new and does not impose a new program or higher level of service.

2. The Requirements in Section VIII.C of the Test Claim Permit, to Promulgate and Implement Pathogen and Bacterial Source Ordinances, Do Not Impose Any New Requirements and Therefore, Section VIII.C. Does Not Mandate a New Program or Higher Level of Service.

The claimants have pled Section VIII.C of the test claim permit, which requires the co-permittees[356] to promulgate and implement local ordinances that would control known pathogen or bacterial indicator sources such as animal wastes, if necessary.[357]

---

[351] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559.

[352] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559.

[353] Exhibit A, Test Claim, filed January 31, 2011, pages 381-382 (Order No. R8-2002-0011, Section III.D).

[354] Exhibit A, Test Claim, filed January 31, 2011, pages 378 (Order No. R8-2002-0011, Section I.B.1), 381-382 (Order No. R8-2002-0011, Section III.D).

[355] Exhibit A, Test Claim, filed January 31, 2011, pages 194 (test claim permit, Section VII.D), 381 (Order No. R8-2002-0011, Section III.D).

[356] "Co-permittees" refers to all permittees except for the principal permittee, Riverside County Flood Control and Water Conservation District. The principal permittee and the co-permittees are collectively referred to as the permittees. Exhibit A, Test Claim, page 125 (test claim permit, page 1).

The Commission finds that Section VIII.C does not mandate a new program or higher level of service because the co-permittees were already required under prior law to implement ordinances to prevent illicit non-stormwater discharges to the MS4, to evaluate the effectiveness of their current ordinances in prohibiting illicit, non-stormwater discharges, including animal waste, and to examine the source of pollutants in urban runoff and implement control measures to protect beneficial uses and attain water quality objectives, which included the control of coliform bacteria.[358]

a. Background

i. Federal law requires the permittees to possess sufficient legal authority to prohibit and control illicit, non-stormwater discharges, and to implement a program to enforce ordinances to prevent illicit, non-stormwater discharges.

The CWA requires that permits for MS4s "shall include a requirement to *effectively prohibit non-stormwater discharges* into the storm sewers," unless those discharges are conditionally exempted from this prohibition.[359] Federal law also requires "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."[360]

Federal law distinguishes between stormwater and non-stormwater discharges. Stormwater is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage; events related to precipitation."[361] A discharge to a MS4 that "is *not* composed entirely of stormwater" is considered an illicit discharge.[362] To satisfy the CWA's directive to "effectively prohibit non-stormwater discharges,"[363] federal

---

[357] Exhibit A, Test Claim, filed January 31, 2011, pages 39-40 (Test Claim narrative), 196 (test claim permit, Section VIII.C).

[358] United States Code, title 33, section 1342(a)(2) (Public Law 100-4); Code of Federal Regulations, title 40, section 122.43(a); Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(1); Exhibit A, Test Claim, filed January 31, 2011, pages 368, 372 (Order No. R8-2002-0011), 383-384 (Order No. R8-2002-0011).

[359] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4), emphasis added.

[360] United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[361] Code of Federal Regulations, title 40, section 122.26(b)(13).

[362] Code of Federal Regulations, title 40, section 122.26(b)(2) defines "illicit discharge" as "any discharge to a municipal separate storm sewer that is *not* composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities."

[363] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4).

regulations specify that the permittees shall have adequate legal authority to "*[p]rohibit* through ordinance…illicit discharges to the municipal separate storm sewer"[364]; and "*[c]ontrol* through ordinance…the discharge to a municipal separate storm sewer of spills, dumping or disposal of *materials other than storm water*."[365] The federal regulations further require the permittees to implement a management program "to detect and remove illicit discharges," which must include "a program…*to implement and enforce an ordinance…to prevent illicit discharges*" to the MS4.[366]

Therefore, federal law requires the permittees to possess sufficient legal authority to prohibit and control illicit, non-stormwater discharges to the MS4, and to implement a program to enforce ordinances to prevent illicit, non-stormwater discharges.

ii. The prior permit required the permittees to implement control measures to protect beneficial uses and attain water quality objectives for coliform bacteria for all inland surface waters within the region.

According to the prior permit, the "ultimate goal of the MS4 permit is to protect these beneficial uses of the Receiving Waters by ensuring that the flows from MS4s do not cause or contribute to an exceedance of 'water quality objectives' (as defined in Appendix 4, Glossary) for the Receiving Waters.[367] The Basin Plan, adopted in 1995, defines the numeric and narrative water quality objectives and beneficial uses of the receiving waters in the region.[368] The prior permit required the permittees to implement control measures to protect beneficial uses, attain "receiving water quality objectives" as defined in the Basin Plan, and to "examine the *source* of pollutants" in urban runoff.[369] The Basin Plan included water quality objectives for coliform bacteria applicable to all inland surface waters within the region.[370]

---

[364] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(B), emphasis added.

[365] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(C), emphasis added.

[366] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(1), emphasis added.

[367] Exhibit A, Test Claim, filed January 31, 2011, page 368 (Order No. R8-2002-0011, Finding 25).

[368] Exhibit A, Test Claim, filed January 31, 2011, page 368 (Order No. R8-2002-0011, Finding 25).

[369] Exhibit A, Test Claim, filed January 31, 2011, pages 369 (Order No. R8-2002-0011, Finding 30 [emphasis added]); 379-382 (Order No. R8-2002-0011, Sections II, III). The prior permit defined "water quality objective" as "Numeric or narrative limits for pollutants or characteristics of water designed to protect the beneficial uses of the water" or, stated differently, "the maximum concentration of a pollutant that can exist in a Receiving Water and still generally ensure that the beneficial uses of the Receiving Water remain protected (i.e., not impaired)." Exhibit A, Test Claim, filed January 31, 2011, page 446 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

[370] Exhibit C, Regional Board's Comments on the Test Claim, page 1506 (Water Quality Control Plan, Santa Ana River Basin, Chapter 4, page 4-9).

Section II of the prior permit identified the following discharge prohibitions and limitations with which the permittees were required to comply:

- Non-stormwater discharges into and from MS4s, unless authorized by an NPDES permit, are prohibited.[371]
- Discharges from MS4s containing pollutants that have not been reduced to the MEP are prohibited.[372]
- If any allowed discharge from MS4s[373] is identified as a significant source of pollutants, the permittees shall either prohibit the discharge category from entering the MS4 or ensure that structural and source control BMPs (including prohibiting of practices and detection and elimination of illicit connections and illegal dumping[374]) are implemented to reduce or eliminate pollutants from the discharge.[375]
- Discharges of pollutants from MS4s, including trash and debris, shall be reduced to the MEP.[376]
- Discharges from MS4s shall comply with the discharge prohibitions contained in the Basin Plan.[377]

---

[371] Exhibit A, Test Claim, filed January 31, 2011, pages 3790-380 (Order No. R8-2002-0011, Sections II.A, II.C).

[372] Exhibit A, Test Claim, filed January 31, 2011, page 379 (Order No. R8-2002-0011, Section II.B).

[373] Section II.C.1-16 of the prior permit identifies the non-stormwater discharges that the permittees "need not prohibit." Exhibit A, Test Claim, filed January 31, 2011, pages 379-380 (Order No. R8-2002-0011, Section II.C).

[374] The prior permit glossary defines "source control BMPs" as follows:

> In general, activities or programs to educate the public or provide low cost non-physical solutions, as well as facility design or practices aimed to limit the contact between pollutant sources and stormwater or authorized non-storm water. Examples include: activity schedules, *prohibitions of practices*, street sweeping, facility maintenance, *detection and elimination of illicit connections and illegal dumping*, and other non-structural measures… Additional examples are provided in Section 4 of Supplement A to the DAMP dated April 1996.

Exhibit A, Test Claim, filed January 31, 2011, page 443-444 (Order No. R8-2002-0011, Appendix 4 [Glossary]), emphasis added.

[375] Exhibit A, Test Claim, filed January 31, 2011, page 380 (Order No. R8-2002-0011, Section II.F).

[376] Exhibit A, Test Claim, filed January 31, 2011, page 380 (Order No. R8-2002-0011, Section II.G).

- Discharges from MS4s shall not cause or contribute to a condition of nuisance (as defined in Water Code section 13050).[378]

The prior permit also required the permittees to evaluate permitted discharges into the MS4s to determine if any were a significant source of pollutants.[379]

Section III of the prior permit identified the following receiving water limitations with which the permittees were required to comply:

- Discharges from MS4 shall not cause or contribute to exceedances of receiving water quality standards (as defined by "beneficial uses" and "water quality objectives" in the Basin Plan and amendments thereto) for surface waters or ground waters.[380]
- Design the DAMP and its components to achieve compliance with receiving water limitations.[381]
- Comply with Sections II (Discharge Limitations and Prohibitions) and III (Receiving Water Limitations) through timely implementation of control measures and other actions to reduce pollutants, as required by the DAMP and the prior permit, including any modifications.[382]

If an exceedance of water quality standards due to discharges persisted notwithstanding implementation of the DAMP and other requirements of the prior permit, the permittees were required to "assure compliance with Sections II.B [Discharge Limitations and Prohibitions][383] and III [Receiving Water Limitations]" by reporting to the Regional Board the BMPs that were currently being implemented and additional BMPs that will be implemented (if approved by the Regional Board) to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards

---

[377] Exhibit A, Test Claim, filed January 31, 2011, page 380 (Order No. R8-2002-0011, Section II.H).

[378] Exhibit A, Test Claim, filed January 31, 2011, page 380 (Order No. R8-2002-0011, Section II.I).

[379] Exhibit A, Test Claim, filed January 31, 2011, page 380 (Order No. R8-2002-0011, Section II.F).

[380] Exhibit A, Test Claim, filed January 31, 2011, pages 380-381 (Order No. R8-2002-0011, Section III.A).

[381] Exhibit A, Test Claim, filed January 31, 2011, page 381 (Order No. R8-2002-0011, Section III.B).

[382] Exhibit A, Test Claim, filed January 31, 2011, page 381 (Order No. R8-2002-0011, Section III.C).

[383] Section II.B of the prior permit states: "The discharge of Urban Runoff from each Permittee's MS4 to the Waters of the U.S. containing pollutants that have not been reduced to the MEP is prohibited." Exhibit A, Test Claim, filed January 31, 2011, page 379 (Order No. R8-2002-0011, Section II.B).

and to "revise the DAMP…to incorporate the approved modified or additional BMPs that have been or are to be implemented.[384]

The prior permit also required the permittees to "demonstrate compliance with all the requirements in this Order," including Section II. Discharge Limitations/Prohibitions and Section III. Receiving Water Limitations, to "implement their DAMP and modifications, revisions, or amendments thereto, which are developed pursuant to this Order or determined by the Permittees to be necessary to meet the requirements of this Order and approved by the Executive Officer," and to "continue to implement *necessary* controls, *in addition to those specific controls and actions* required by (1) the terms of this Order and (2) the DAMP, to reduce the discharge of pollutants in Urban Runoff to the MEP."[385]

Therefore, the permittees were required by the prior permit to examine the source of pollutants in urban runoff and implement control measures to protect beneficial uses and attain water quality objectives, and they were aware, from the Basin Plan, that those water quality objectives included the control of coliform bacteria.

iii. The prior permit required the permittees to maintain adequate legal authority to prohibit non-stormwater discharges from entering the MS4s and to control the contribution of pollutants to the MS4s.

Echoing the requirements of federal law, the prior permit describes the permittees' legal authority to effectively prohibit illegal discharges and illicit connections as follows:

> Order No. 90-104 and Order No. 96-30 required the Permittees to… (2) eliminate illegal discharges and illicit connections to the MS4s; and (3) enact the necessary legal authority to effectively prohibit such illegal discharges and illicit connections.[386]
>
> * * *
>
> The Permittees have the authority to control pollutants in Urban Runoff discharges, to prohibit illicit connections and illegal discharges, to control spills, and to require compliance and carry out inspections of the MS4s within their respective jurisdictions. The Co-Permittees have been extended necessary legal authority through California statutes and local charters. Consistent with this statutory authority, each of the Co-Permittees have adopted their respective Storm Water Ordinances. The Co-Permittees are required by this Order to review their respective Storm Water Ordinances and other ordinances, regulations, and codes adopted by them to determine whether the language of said ordinances, regulations, and codes needs to be modified or expanded to allow for

[384] Exhibit A, Test Claim, filed January 31, 2011, page 381 (Order No. R8-2002-0011, Section III.D).

[385] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A), emphasis added.

[386] Exhibit A, Test Claim, filed January 31, 2011, page 368 (Order No. R8-2002-0011).

enforcement actions, including civil and/or criminal penalties, to be brought by each Co-Permittee consistent with the provisions of this Order.[387]

The prior permit describes the purpose of the co-permittees' stormwater ordinances as "to *prohibit pollutant discharges* in the Permittees respective MS4s and to *regulate illicit connections and non-storm water discharges* to said MS4s."[388] Additionally, the prior permit required the permittees to annually assess the effectiveness of their stormwater ordinances and enforcement practices in prohibiting non-exempt, non-stormwater discharges or to propose "appropriate control measures in lieu of prohibiting" certain specified non-exempt, non-stormwater discharges, including animal waste, as follows:

> Within twelve (12) months of this Order's adoption, and annually thereafter in November, the Permittees shall provide a report containing a review of their Storm Water Ordinances and their ordinance enforcement practices to assess their effectiveness in prohibiting non-exempt, non-storm water discharges to the MS4s (*the Permittees may propose appropriate control measures in lieu of prohibiting these discharges, where the Permittees are responsible for ensuring that dischargers adequately maintain those control measures*). At a minimum, the following types of non-exempt, non-storm water discharges and wastes shall be considered:
>
> 1. Sewage, where a Co-Permittee operates a POTW and associated sewage collection system;
>
> 2. Wash water resulting from the hosing or cleaning of gas stations, and other types of automobile service stations;
>
> 3. Discharges resulting from the cleaning, repair, or maintenance of equipment, machinery, or facilities, including motor vehicles, concrete mixing equipment, portable toilet servicing, etc.;
>
> 4. Wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet cleaning, etc.;
>
> 5. Water from cleaning of municipal, industrial, and commercial areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, containing chemicals or detergents, and without prior sweeping, etc.;
>
> 6. Runoff from material storage areas or uncovered receptacles that contain chemicals, fuels, grease, oil, or other hazardous materials;
>
> 7. Discharges of runoff from the washing of toxic materials from paved or unpaved areas;

---

[387] Exhibit A, Test Claim, filed January 31, 2011, page 372 (Order No. R8-2002-0011).

[388] Exhibit A, Test Claim, filed January 31, 2011, page 369 (Order No. R8-2002-0011), emphasis added.

8. Discharges from pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine;

9. *Pet waste, yard waste, debris, sediment, etc.*;

10. Restaurant or food processing facility wastes such as grease, floor mat and trash bin wash water, food waste.[389]

As the prior permit's Fact Sheet explains, "[i]f appropriate pollution control measures are not implemented, Urban Runoff may contain pathogens (bacteria, protozoa, viruses)..."[390]

Thus, the prior permit required the permittees to: maintain adequate legal authority to prohibit illegal, non-stormwater discharges and control the contribution of pollutants to their respective MS4s; enforce those authorities; take appropriate enforcement action when their storm water ordinances were violated; annually assess the effectiveness of their stormwater ordinances and enforcement practices in prohibiting non-exempt, non-stormwater discharges; and, as part of that annual review, propose "appropriate control measures in lieu of prohibiting" certain specified non-exempt, non-stormwater discharges, including animal waste.[391]

b. Section VIII.C of the test claim permit does not mandate a new program or higher level of service.

Section VIII.C of the test claim permit requires the co-permittees to promulgate and implement ordinances to control known pathogen or bacterial indicator sources, as follows:

> Within three (3) years of adoption of this Order, the Co-Permittees shall promulgate and implement ordinances that would control known pathogen or Bacterial Indicator sources such as animal wastes, if necessary.[392]

Only two of the claimants allege they incurred increased costs as a result of Section VIII.C.[393] The claimants contend that Section VIII.C goes beyond federal law and the

---

[389] Exhibit A, Test Claim, filed January 31, 2011, pages 383-384 (Order No. R8-2002-0011, Section V.F).

[390] Exhibit A, Test Claim, filed January 31, 2011, page 451 (Order No. R8-2002-0011, Fact Sheet).

[391] Exhibit A, Test Claim, filed January 31, 2011, pages 377, 382-383 (Order No. R8-2002-0011).

[392] Exhibit A, Test Claim, filed January 31, 2011, page 196 (test claim permit, Section VIII.C).

[393] Exhibit A, Test Claim, filed January 31, 2011, page 40 ("Claimant City of Moreno Valley incurred increased costs of an estimated $7,000 in FY 2010-11 and Claimant City of Hemet incurred increased costs of an estimated $4,460 in FY 2011-12 in responding to these 2010 Permit requirements").

prior permit because it requires the co-permittees to enact ordinances that address a specific pollutant.

> Section VIII.C of the 2010 permit would require the permittees, including Claimants, to research existing ordinance authority and, if insufficient to address the source of known pathogens or Bacterial Indicator sources, to develop ordinance language that meets legal requirements, to submit such language to the permittee governing bodies for consideration and approval of the ordinance/ordinances, development of a program to implement the ordinances and enforcement of the ordinances.[394]

The claimants assert that the prior permit did not expressly require the permittees to evaluate whether they needed ordinances to control known pathogens or bacterial indicator sources nor to "promulgate and implement" such ordinances.[395] According to the claimants, the prior permit requirements to evaluate the general effectiveness of ordinances and implement "unspecific" control measures to address beneficial uses and achieve water quality objectives are not akin to promulgation and implementation of bacterial source ordinances.[396] In support, the claimants rely on *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 to assert that a "new permit requirement that is intended to implement an existing legal requirement is not therefore transformed into an existing requirement."[397] The claimants further assert that the federal law requirements – to effectively prohibit non-stormwater discharges, including through adoption of ordinances – do not constitute a federal mandate because the federal regulations do not specify how the permittees are to comply.[398] The claimants cite to *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 756 and *Department of Finance v. Commission on State Mandates* (2017) 8 Cal.App.5th 661, 683 for the proposition that where the federal regulations give the permittees discretion in how they implement the federal requirements, there is no federal mandate.[399]

---

[394] Exhibit A, Test Claim, filed January 31, 2011, page 40 (Test Claim narrative).

[395] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8.

[396] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8.

[397] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8.

[398] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8 (referring to United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4); Code of Federal Regulations, title 40, sections 122.26(d)(2)(i)(B), 122.26(d)(2)(iv)(B)(1)).

[399] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8.

The Regional Board asserts that under federal law, dry weather discharges containing pathogens or bacteria constitute illicit discharges and must be prohibited.[400] Thus, promulgating and implementing ordinances that control known pathogen and bacteria indicator sources is mandated by federal law.[401] The Regional Board further contends that "the challenged provision maintains permit-wide consistency with the more specific, and federally-mandated, provisions for MSAR [Middle Santa Ana River] TMDL-implementation contained elsewhere" and as such, does not exceed the requirements imposed by federal law.[402]

As described below, the Commission finds that Section VIII.C does not impose any new requirements and thus, does not mandate a new program or higher level of service.

Section VIII.C requires the co-permittees to assess whether their jurisdiction requires a new or revised ordinance to address "known sources" of pathogens or bacteria, such as animal waste. Yet the test claim permit does not define "known pathogen or bacteria indicator sources," beyond the single example of animal waste. As the Regional Board explains, "[b]acteria indicator sources, such as fecal coliform or E. coli, are commonly used as indicator sources to determine general levels of pathogens present in water."[403] According to the test claim permit Fact Sheet, water quality monitoring data submitted by the permittees "document a number of exceedances of Basin Plan Water Quality Objectives for various Urban Runoff-related Pollutants; *the most notable among these exceedances was fecal coliform bacteria*."[404]

In describing the scope of the co-permittees' legal authority to control discharges, the test claim permit acknowledges that there are certain sources of pollutants that may be beyond the ability of the permittees to prevent or eliminate, including "bacteria and wildlife":

> The Co-Permittees have established legal authority to control discharges into the MS4 facilities that they own and/or operate. As owners and/or operators of the MS4, the Permittees are responsible for discharges into their MS4 facilities to the extent of their legal authority. The discharge of Pollutants into the MS4 may cause or contribute to, or threaten to cause or contribute to, a condition of Pollution in Receiving Waters. Federal regulations, 40 CFR 122.26(d)(2)(i), require the Permittees to control the

---

[400] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 25-26.

[401] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 25-26.

[402] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 26.

[403] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 25.

[404] Exhibit A, Test Claim, filed January 31, 2011, page 326 (test claim permit, Appendix 6 [Fact Sheet]).

> discharge of Pollutants into the MS4 to the maximum extent practicable (MEP). *Certain activities and sources that generate Pollutants present in Urban Runoff may be beyond the ability of Permittees to prevent or eliminate.* Examples of these activities and sources include, but are not limited to: emissions from internal combustion engines, brake pad wear and tear, atmospheric deposition, *bacteria and wildlife (including feral cats and dogs)* and leaching of naturally occurring nutrients and minerals from local soils. This Order is not intended to address background or naturally occurring Pollutants or flows.[405]

The test claim permit explains, however, that controlling the sources of bacteria is necessary because bacteria has been identified as a pollutant of concern.

> Bacteria and nutrients are the Pollutants of Concern for a majority of the inland waters that are listed under the 303(d) list of Impaired Waterbodies or an adopted Total Maximum Daily Load (TMDL). This Order requires the Permittees to identify sources of bacteria and nutrients in Urban Runoff to their MS4 and *to control those Pollutant sources*.[406]

Thus, the ordinance requirement in Section VIII.C is one of multiple control measures the Regional Board has put in place to reduce the presence of known sources of certain pollutants of concern (e.g., bacteria) that cannot be fully prevented or eliminated.

To determine whether a requirement imposed by the test claim permit is new, the court in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 held, like several prior court cases, that "we compare the legal requirements imposed by the new permit with those in effect before the new permit became effective."[407] This was the case in *Department of Finance. v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, where the court found that installing and maintaining trash receptacles at transit stops and performing certain inspections as required by that stormwater permit were both *new duties* that local governments were required to perform, when compared to prior law ("the mandate to install and maintain trash receptacles at transit stops is a 'new program' within the meaning of section 6 because it was not required prior to the Regional Board's issuance of the permit").[408]

However, neither of these cases nor any other stands for the proposition advanced by the claimants that such a comparison to determine what is newly required is limited to

---

[405] Exhibit A, Test Claim, filed January 31, 2011, pages 130-131 (test claim permit, Section I.C), emphasis added.

[406] Exhibit A, Test Claim, filed January 31, 2011, page 144 (test claim permit, Section II.E.8), emphasis added.

[407] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559. See also, *San Diego Unified* v. *Commission on State Mandates* (2004) 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[408] *Department of Finance. v. Commission State Mandates* (2021) 59 Cal.App.5th 546, 558.

the specific words of the sections cited, without interpreting those words and requirements in context with the entire permits and the federal laws they implement. The claimants' theory contradicts the rules of statutory interpretation. Rather, the requirements of Section VIII.C of the test claim permit and the prior permit have to be interpreted in context with the whole, to determine if the requirements are new.[409] When viewed in the context of both existing federal law and the requirements imposed by the prior permit, the requirements in Section VIII.C to "promulgate and implement ordinances that would control known pathogen or Bacterial Indicator sources such as animal wastes, if necessary" do not impose any new requirements on the co-permittees.

Federal law requires the Regional Board to establish conditions to ensure compliance with all applicable requirements of the CWA and federal regulations, including implementing and enforcing ordinances to prevent illicit non-stormwater discharges to the MS4.[410] Moreover, federal law specifically requires the permittees to "effectively prohibit non-stormwater discharges,"[411] by prohibiting through ordinance illicit discharges[412] and controlling through ordinance discharge of materials other than stormwater.[413] Therefore, a "known pathogen or bacteria indicator source" discharge is an illicit, non-stormwater discharge that must be prohibited and controlled through ordinance.

The permittees were already required by the prior permit to maintain and enforce adequate legal authority to prohibit illicit, non-stormwater discharges[414] and to control the contribution of pollutants to their respective MS4s.[415] The prior permit also required the permittees to annually evaluate the effectiveness of their current ordinances and enforcement practices in prohibiting illicit, non-stormwater discharges, including animal waste, and to propose "appropriate control measures in lieu of prohibiting" certain

---

[409] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 ("[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.").

[410] United States Code, title 33, section 1342(a)(2) (Public Law 100-4); Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B)(1), 122.43(a).

[411] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4).

[412] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(B).

[413] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(C).

[414] Under both the prior and test claim permits, "non-stormwater" is defined as, "All discharges to and from a MS4 that do not originate from precipitation events (i.e., all discharges to a MS4 other than storm water). Non-storm water includes illicit discharges, non-prohibited discharges and NPDES permitted discharges." Exhibit A, Test Claim, filed January 31, 2011, pages 285 (test claim permit, Appendix 4 [Glossary]), 441 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

[415] Exhibit A, Test Claim, filed January 31, 2011, pages 368, 372 (Order No. R8-2002-0011).

specified non-exempt, non-stormwater discharges, including animal waste.[416] Moreover, the permittees had to examine the source of pollutants in urban runoff and implement pollution control measures to protect beneficial uses and attain water quality objectives, and they were aware that those water quality objectives included the control of coliform bacteria.[417] And importantly, if an exceedance of water quality standards due to discharges persisted (which it did for bacteria and nutrients),[418] the permittees were required to revise their BMPs to prevent or reduce any pollutants that were causing or contributing to the exceedance of water quality standards.[419] Thus, when reviewed in context of prior law, the co-permittees were already required by the prior permit to evaluate the need within their jurisdictions for ordinances to "control known pathogen or bacterial indicator sources such as animal waste" and if necessary, to develop and implement those ordinances. Thus, the requirements imposed by requirements in Section VIII.C are not new.

Moreover, the claimants' assertion that the federal law requirements discussed above – to effectively prohibit non-stormwater discharges, including through adoption of ordinances – do not constitute a federal mandate because the federal regulations do not specify how the permittees are to comply, is misplaced.[420] As the claimants acknowledge, this Decision does *not* reach the issue of whether the requirements in Section VIII.C, to promulgate and implement ordinances that would control known pathogen or bacterial indicator sources such as animal wastes, constitutes a state or federal mandate. Rather, as stated above, the requirements to promulgate and implement an ordinance to control known pathogens or bacterial indicator sources are *not new* when compared to prior law and, therefore, do not impose a new program or higher level of service. Since this Decision finds that the requirements imposed by Section VIII.C. are *not* new, there is no need to reach the mandate issue.[421]

---

[416] Exhibit A, Test Claim, filed January 31, 2011, pages 383-384 (Order No. R8-2002-0011, Section V.F).

[417] Exhibit A, Test Claim, filed January 31, 2011, pages 369 (Order No. R8-2002-0011, Finding 30; 379-382 (Order No. R8-2002-0011, Sections II, III). The Basin Plan included water quality objectives for coliform bacteria applicable to all inland surface waters within the region. Exhibit C, Regional Board's Comments on the Test Claim, page 1506 (Water Quality Control Plan, Santa Ana River Basin, Chapter 4, page 4-9).

[418] Exhibit A, Test Claim, filed January 31, 2011, page 144 (test claim permit, Section II.E.8).

[419] Exhibit A, Test Claim, filed January 31, 2011, page 381 (Order No. R8-2002-0011, Section III.D).

[420] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 8 (referring to United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4); Code of Federal Regulations, title 40, sections 122.26(d)(2)(i)(B), 122.26(d)(2)(iv)(B)(1)).

[421] For reimbursement to be constitutionally required under article XIII B, section 6, all of the legal elements must be satisfied with respect to each statute or executive order pled

Accordingly, the Commission finds that the requirements in Section VIII.C are not new and therefore do *not* mandate a new program or higher level of service.

3. The Requirements in Sections IX.D, IX.H, and Appendix 3, Section III.E.3 of the Test Claim Permit, to Review and Revise the Illegal Connections and Illicit Discharges (IC/ID) Program to Include a Proactive Illicit Discharge Detection and Elimination Program Using Specified Guidance and to Report the Results in the Annual Report; to Review and Update IC/ID Reconnaissance Strategies Using the Same Specified Guidance; to Maintain a Database of IC/ID Incident Response, Except Those Resulting in Enforcement Actions; and to Establish a Baseline Dry Weather Flow Concentration for TDS and TIN at Each Core Monitoring Location, Impose a State-Mandated New Program or Higher Level of Service. However, the Requirements in Section IX.E, to Perform the Five Specified IDDE Activities, and Section IX.H, to Annually Report on IC/ID Incident Response, Are Not New and Do Not Mandate a New Program or Higher Level of Service.

The Test Claim pleads Sections IX.D, IX.E, IX.H, and Appendix 3, Section III.E.3 of the test claim permit, regarding changes to the illegal connections and illicit discharges (IC/ID) program, as follows:

> The 2010 Permit (as well as the associated monitoring and reporting program contained in Appendix 3 of the Permit) requires the permittees, including Claimants, to review and enhance their illegal connections/illegal discharges ("IC/ID") program to include a "pro-active" Illicit Discharge Detection and Elimination ("IDDE") program using an EPA manual or equivalent program. This program then must be used to investigate and track potential illegal discharges and the permittees are required to maintain a database summarizing IC/ID incident responses, which must be updated annually and submitted with the permittees' annual reports.[422]

The Test Claim contends that the following activities are now required as part of the "requirement to revise existing permittee IC/ID programs to incorporate the IDDE program" and are mandated by the state:

- Develop a map of MS4 outfalls;

---

in the test claim. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Fresno v. State of California* (1990) 53 Cal.3d 482, 487; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875. See also, *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640 ("We need not decide whether the Test Claim Statutes impose a mandate on local governments . . ." since there were no costs mandated by the state pursuant to Government Code section 17556.)

[422] Exhibit A, Test Claim, filed January 31, 2011, page 40 (Test Claim narrative).

- Schedule and conduct investigations of MS4 open channels and major outfalls;
- Conduct IC/ID Monitoring and use field indicators to identify potential illegal discharges;
- Track illegal discharges to their sources where feasible; and
- Annually review and evaluate these increased IC/ID programs and to report upon such evaluation as part of their annual reports.[423]

The Draft Proposed Decision found that the Test Claim did not plead the last sentence of Appendix III, Section III.E.3, which states that "[t]he Dry Weather monitoring for nitrogen and total dissolved solids shall be used to establish a baseline dry weather flow concentration for TDS [total dissolved solids] and TIN [total inorganic nitrogen] at each Core monitoring location." While the Test Claim quotes Appendix III, Section III.E.3 in its entirety, it omits any specific discussion of the requirement found in the last sentence of Appendix III, Section III.E.3.[424] Furthermore, the declarations filed by the claimants do not identify any specific costs for this activity, but simply say the following:

> Sections IX.D, IX.E. and IX.H of the Permit, along with Section Ill.E.3 of the Monitoring and Reporting Program, Appendix 3 to the Permit, requires that the permittees, including the County, develop and include a "pro-active" Illicit Discharge Detection and Elimination ("IDDE") program as part of their illicit connections/illegal discharges program, and then to use that program to investigate and track potential illegal discharges. The permittees also are required to maintain a database, which must be annually updated and submitted with the permittees' Annual Reports.[425]

In comments on the Draft Proposed Decision, the claimants assert that they did properly plead Appendix III, Section III.E.3 in its entirety, including the requirement to use "Dry Weather monitoring for nitrogen and total dissolved solids…to establish a baseline dry weather flow concentration for TDS and TIN at each Core monitoring location" because they quoted all of Appendix III, Section III.E.3 in the Test Claim; the Test Claim narrative identified IC/ID monitoring as a reimbursable activity and the costs for IC/ID monitoring; and the test claim was deemed complete.[426]

Government Code section 17553(b)(1) requires the test claim to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state, as follows:

---

[423] Exhibit A, Test Claim, filed January 31, 2011, page 42 (Test Claim narrative).

[424] Exhibit A, Test Claim, filed January 31, 2011, pages 42 (Test Claim narrative), 253 (test claim permit, Appendix 3, Section III.E.3).

[425] Exhibit A, Test Claim, filed January 31, 2011, pages 43 (Test Claim narrative), 66-67, 74-75, 80-81, 86-87, 92-93, 98-99, 105, 111-112, 117-118 (supporting declarations).

[426] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 9-10.

> (b) All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents: (1) A written narrative that identifies *the specific sections of statutes or executive orders* and the effective date and register number of regulations *alleged to contain a mandate* and shall include all of the following: (A) *A detailed description of the new activities and costs* that arise from the mandate…[427]

The purpose of article XIII B, section 6 is to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government annual spending limit.[428] Thus, the specific pleading requirements identified in Government Code section 17553 are necessary to determine the specific costs that are claimed to be reimbursable and whether those specific costs are newly mandated when compared to prior law.

After further review of the Test Claim and the comments filed on the Test Claim, this Decision will address all of Appendix III, Section III.E.3, including the last sentence. Although the Test Claim does not contain "a detailed description" of the requirement imposed by this sentence as required by section 17553, it does generally identify IC/ID monitoring and requests reimbursement "to use that program to investigate and track potential illegal discharges." In addition, the Regional Board, in comments on the Test Claim, filed comments on the last sentence of Appendix III, Section III.E.3 and, thus, considered that sentence pled by the claimants.[429]

For the reasons explained below, the Commission finds that Sections IX.D, IX.H, and Appendix 3, Section III.E.3 of the test claim permit impose some new requirements on the permittees and therefore mandate a new program or higher level of service. However, the requirements in Section IX.E, to perform the five specified IDDE activities, and Section IX.H, to annually report on IC/ID incident response, are not new and does not impose a new program or higher level of service.[430]

---

[427] Government Code section 17553(b)(1) (as amended by Stats. 2007, ch. 329), emphasis added.

[428] California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

[429] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 29.

[430] The requirement in Section IX.D to update the Local Implementation Plan (LIP) is not analyzed as part of the IC/ID program requirements and is instead addressed separately in Section IV.B.1 of the Decision as part of the test claim permit's LIP provisions.

a. Background

i. Federal law requires the permittees to prohibit and control illicit, non-stormwater discharges to the MS4, to detect and remove illicit discharges, to assess the effectiveness of controls in reducing pollutants, and to annually report on the implementation of the stormwater management program, data on monitoring, enforcement actions, inspections, public education programs, and any necessary revisions to their program.

Federal law requires that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers."[431] Federal law distinguishes between stormwater and non-stormwater discharges. Stormwater is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage; events related to precipitation."[432] A discharge to a MS4 that "is *not* composed entirely of stormwater" is considered an illicit discharge.[433]

Federal regulations implementing the CWA require that all applicants for a MS4 permit have a management program that includes a program to identify illicit connections to the MS4, and "a program, including a schedule, *to detect and remove…illicit discharges* and improper disposal into the storm sewer."[434] The illicit discharges programs are required to include the following elements:

> (1) Implementation and enforcement of an ordinance, orders or similar means to prevent illicit discharges to the MS4;
>
> (2) Procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;
>
> (3) Procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water. Procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Procedures

[431] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4).

[432] Code of Federal Regulations, title 40, section 122.26(b)(13).

[433] Code of Federal Regulations, title 40, section 122.26(b)(2) defines "illicit discharge" as "any discharge to a municipal separate storm sewer that is *not* composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities."

[434] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B), emphasis added.

must include the location of storm sewers that have been identified for such evaluation;

(4) Procedures to prevent, contain, and respond to spills that may discharge into the MS4;

(5) A program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from MS4s;

(6) Educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(7) Controls to limit infiltration of seepage from municipal sanitary sewers to MS4s where necessary.[435]

Federal regulations also require an MS4 permit application to identify the location of known MS4 outfalls on a topographic map:

> A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the MS4 covered by the permit application. The following information shall be provided: (1) The location of known MS4 outfalls discharging to waters of the United States.[436]

To meet water quality standards, federal law also requires dischargers to monitor compliance with the effluent limitations identified in an NPDES permit, and report monitoring results at least once per year, or within 24 hours for any noncompliance which may endanger health or the environment.[437] An NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance.[438]

Federal regulations further require that the permit application contain the "results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application."[439]

> At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab

---

[435] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B).

[436] Code of Federal Regulations, title 40, section 122.26(d)(1)(iii)(B).

[437] Code of Federal Regulations, title 40, sections 122.41 (conditions applicable to all permits, including monitoring and reporting requirements); 122.44(i) (monitoring requirements to ensure compliance with permit limitations); 122.48 (requirements for recording and reporting monitoring results); and Part 127 (electronic reporting).

[438] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(F); see also *Natural Resources Defense Council, Inc. v. County of Los Angeles* (2013) 725 F.3d 1194, 1209.

[439] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

> samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136 [Guidelines Establishing Test Procedures for the Analysis of Pollutants], the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall.[440]

Federal regulations also require the permittees to assess their controls to estimate "reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program."[441] In addition, federal law requires the submission of an annual report that describes the "status of implementing the components of the storm water management program that are established as permit conditions," "[p]roposed changes to the storm water management programs that are established as permit conditions," any "[r]evisions, if necessary, to the assessment of controls," a "summary of data, including monitoring data, that is accumulated throughout the reporting year; and a "summary describing the number and nature of enforcement actions, inspections, and public education programs."[442]

In October 2004, the Center for Watershed Protection issued the Guidance Manual for Illicit Discharge Detection and Elimination.[443] The Guidance Manual is the product of a cooperative agreement sponsored by U.S. EPA and was "intended to provide support and guidance, primarily to Phase II NPDES MS4 communities, for the establishment of Illicit Discharge Detection and Elimination (IDDE) programs and the design and procedures of local investigations of non-stormwater entries into storm drainage

---

[440] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

[441] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

[442] Code of Federal Regulations, title 40, section 122.42(c).

[443] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 1.

systems" and "has application for Phase I communities looking to modify existing programs and community groups such as watershed organizations that are interested in providing reconnaissance and public awareness services to communities as part of watershed restoration activities."[444] As stated above in Section II.A of this Decision, The Phase I Rule and later amendments thereto apply to the test claim permit. The Guidance Manual explains that a comprehensive manual was necessary to provide guidance to MS4 permittees on establishing and implementing an IDDE program, an "ongoing process" that should become more effective over time:

> An up-to-date and comprehensive manual on techniques to detect and correct discharges in municipal storm drains has been unavailable until now. This has been a major obstacle for both Phase I and Phase II National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) communities *that must have programs in place that detect, eliminate, and prevent illicit discharges to the storm drain system*…This manual provides communities with guidance on establishing and implementing an effective Illicit Discharge Detection and Elimination (IDDE) program.
>
> Studies have shown that dry weather flows from the storm drain system may contribute a larger annual discharge mass for some pollutants than wet weather storm water flows (EPA, 1983 and Duke, 1997). Detecting and eliminating these illicit discharges involves complex detective work, which makes it hard to establish a rigid prescription to "hunt down" and correct all illicit connections. Frequently, there is no single approach to take, but rather a variety of ways to get from detection to elimination. Local knowledge and available resources can play significant roles in determining which path to take. At the very least, communities need to systematically understand and characterize their stream, conveyance, and storm sewer infrastructure systems. When illicit discharges are identified, they need to be removed. *The process is ongoing and the effectiveness of a program should improve with time*. In fact, well-coordinated IDDE programs can benefit from and contribute to other community-wide water resources-based programs, such as public education, storm water management, stream restoration, and pollution prevention.[445]

---

[444] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 3.

[445] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 4.

The Guidance Manual explains that the purpose of an IDDE program is "to find, fix and prevent illicit discharges" and describes a "series of techniques" to meet these objectives:

- Finding illicit discharges through monitoring techniques aimed at continuous and intermittent sewage discharges to find problem areas and then trace the problem back up the stream or pipe to identify the ultimate generate site or connection. Monitoring techniques fall into three major categories: outfall reconnaissance inventory, indicator monitoring at stormwater outfalls and in-stream, and tracking discharges to their source; [446]
- Fixing, repairing, or eliminating illicit discharges through targeted education programs and legal authority;[447] and
- Preventing illicit discharges through pollution prevention practices, spill management and response plans.[448]

The Guidance Manual recommends that the following eight "basic program components" be considered when building an IDDE program:[449]

1. Audit existing resources and programs
2. Establish responsibility, authority, and tracking
3. Complete a desktop assessment of illicit discharge potential
4. Develop program goals and implementation strategies
5. Search for illicit discharge problems in the field
6. Isolate and fix individual discharges
7. Prevent illicit discharges

---

[446] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 6.

[447] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 7.

[448] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 7.

[449] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 8.

8. Evaluate the program[450]

In April 2010, several months after the adoption of the test claim permit, U.S EPA issued the MS4 Permit Improvement Guide.[451] The Guide is intended "to assist National Pollutant Discharge Elimination System (NPDES) permit writers in strengthening municipal separate storm sewer system (MS4) permits" through "examples of permit conditions and supporting rationale that could be used in fact sheets that accompany NPDES permits" and "recommendations for permit writers on how to tailor the language depending on the type of permit."[452] "The objective of the Guide is to facilitate the creation of MS4 permits which are clear, consistent with applicable regulations, and enforceable."[453] The MS4 Permit Improvement Guide explains that "[i]n addition to requiring permittee[s] to have the legal authority to prohibit non-stormwater discharges from entering storm sewers (CWA Section 402(p)(3)(B)) (see Chapter I), MS4 permits must also require the development of a comprehensive, proactive Illicit Discharge Detection Elimination (IDDE) program," which it describes as follows:

> An effective IDDE program is more than just a program to respond to complaints about illicit discharges or spills. Permittees must proactively seek out illicit discharges, or activities that could result in discharges, such as illegal connections to the storm sewer system, improper disposal of wastes, or dumping of used motor oil or other chemicals.
>
> In order to trace the origin of a suspected illicit discharge or connection, the permittee must have an updated map of the storm drain system and a formal plan of how to locate illicit discharges and how to respond to them once they are located or reported. The permittee must provide a mechanism for public reporting of illicit discharges and spills, as well as an effective way for staff to be alerted to such reports. Regular field screening of outfalls for non-stormwater discharges needs to occur in areas determined to have a higher likelihood for illicit discharges and illegal connections. Proper investigation and enforcement procedures must be in place to eliminate the sources of the discharges, as well. Finally, in order for the permittee to adequately detect and eliminate sources of illicit

---

[450] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, pages 8-10.

[451] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 1.

[452] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 2.

[453] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 3.

> discharges, both field and office staff must be properly trained to recognize and report the discharges to the appropriate parties.[454]

The MS4 Permit Improvement Guide also states that "EPA recommends that permittees refer to the Center for Watershed Protection's guide on Illicit Discharge Detection and Elimination (IDDE): A Guidance Manual for Program Development and Technical Assistance (IDDE Manual, available at www.cwp.org) when developing an IDDE program"[455] and gives the following example of an IDDE program permit provision:

> The permittee must continue to implement a program to detect, investigate, and eliminate non-stormwater discharges including illegal dumping, into its system. The IDDE program must include the following:
>
> a. An up-to-date storm sewer system map.
>
> b. Procedures for identifying priority areas within the MS4 likely to have illicit discharges, and a list of all such areas identified in the system
>
> c. Field screening to detect illicit discharges
>
> d. Procedures for tracing the source of an illicit discharge
>
> e. Procedures for removing the source of the discharge
>
> f. Procedures for program evaluation and assessment
>
> g. Procedures to prevent and correct any on-site sewage disposal systems that discharge into the MS4.[456]

As U.S. EPA notes, the "permit language suggested in this Guide is not intended to override already existing, more stringent or differently-worded provisions that are equally as protective in meeting the applicable regulations" and therefore cannot be construed to impose requirements on the permittees under federal law.[457] Nonetheless, an agency's interpretation of a statute or regulation involving its area of expertise is entitled to great weight, unless the interpretation "flies in the face of the clear language and purpose of the interpreted provision."[458]

Thus, EPA's interpretation of the federal regulations requiring the "development of a comprehensive, proactive Illicit Discharge Detection Elimination (IDDE) program and

---

[454] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 4.

[455] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 4.

[456] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, pages 4-5 (internal references omitted).

[457] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 2.

[458] *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.

the example IDDE program permit provision should be considered when interpreting the IC/ID permit provisions at issue in this Test Claim.

> *ii. The prior permit required the permittees to prohibit illegal connections and illicit discharges to the MS4 through their legal authority; investigate and eliminate IC/IDs; implement and improve their inspection, monitoring, and reporting programs; implement control measures to reduce and eliminate the discharge of pollutants from the MS4s to the receiving water; review and revise their reconnaissance strategies to identify and prohibit IC/IDs; and annually assess and report on the effectiveness of and revisions to the Drainage Area Management Plan, storm water ordinances, and enforcement practices in prohibiting IC/IDs, control measures under the IC/ID program, and the monitoring program.*

The prior permit required the co-permittees to "continue to prohibit illicit connections and illegal discharges to the MS4s through their Storm Water Ordinances" and for the principal permittee to do so through its statutory authority.[459] As part of their IC/ID programs, the prior permit also required the permittees to "implement and improve" their routine inspection, monitoring, and reporting programs,[460] and if routine inspections or dry weather monitoring indicated IC/IDs, to investigate and eliminate, and to document those actions in the annual report.[461] The prior permit also required implementation of control measures to reduce and eliminate the discharge of pollutants, including trash and debris, from the MS4s to receiving waters and reporting on those control measures in the annual report;[462] to inspect, clean, and maintain open channel MS4s and retention/detention basins, including where there is evidence of illicit discharges; and to review, document, and submit for approval their program for cleaning out open channel MS4s, catch basins, retention/detention basins, and wetlands created for urban runoff treatment.[463]

The prior permit provides the following overview of the IC/ID program:

> Illegal discharges to the MS4s can contribute to "contamination" (as defined in Appendix 4, Glossary) of Urban Runoff and other surface waters. The RCFC&WCD was required by Order No. 90-104 to conduct

---

[459] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[460] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[461] Exhibit A, Test Claim, filed January 31, 2011, pages 384-385 (Order No. R8-2002-0011, Sections VI.A, VI.B).

[462] Exhibit A, Test Claim, filed January 31, 2011, page 385 (Order No. R8-2002-0011, Section VI.C).

[463] Exhibit A, Test Claim, filed January 31, 2011, page 409 (Order No. R8-2002-0011, Sections XI.G, XI.H).

> an inspection of underground storm drains and only one illicit connection could be identified. Open channels and other aboveground elements of the MS4s are inspected for evidence of illegal discharges as an element of routine maintenance by the Permittees. The Permittees also developed a program to prohibit illegal discharges and illicit connections to their MS4s. Continued surveillance and enforcement of these programs are required to eliminate illicit connections and illegal discharges. The Permittees have a number of procedures in place to eliminate illicit connections and illegal discharges to the MS4s, including construction, commercial, and industrial facility inspections, drainage facility inspections, water quality monitoring and reporting programs, and public education.[464]

The prior permit explains that the permittees have identified major outfalls and submitted maps of existing MS4s.

> The Permittees own and/or operate MS4s through which Urban Runoff is discharged into the Waters of the U. S. *The Permittees have identified major outfalls* (with a pipe diameter of 36 inches or greater or drainage areas draining 50 acres or more) *and have submitted maps of existing MS4s.* The Co-Permittees reported having approximately 153.3 miles of underground storm drains, and 21.3 miles of channels. The RCFC&WCD reported having 135 miles in underground storm drains and 133 miles of channels.[465]

Section XIII.B of the prior permit required the permittees to annually evaluate the DAMP to determine the need for revisions and to include in the annual report the findings of that review and any proposed revisions.[466] Chapter 4 of the DAMP pertains to elimination of IC/IDs and subsection 4.3 pertains to detection and elimination of illicit connections, which states in relevant part:

> *The Permittees actively seek to eliminate and prohibit illicit connections and illegal discharges to the MS4.* In addition, the Permittees implement and improve routine inspection and monitoring and reporting programs for their MS4. If routine inspections or dry weather monitoring indicate illicit connections or illegal discharges, they are investigated and eliminated or permitted as soon as possible, but no later than sixty (60) calendar days of receipt of notice by Permittee staff or from a third party. However, illicit

---

[464] Exhibit A, Test Claim, filed January 31, 2011, page 372 (Order No. R8-2002-0011, Finding 41).

[465] Exhibit A, Test Claim, filed January 31, 2011, pages 367-368 (Order No. R8-2002-0011, Finding 21), emphasis added.

[466] Exhibit A, Test Claim, page 412 (Order No. R8-2002-0011, Section XIII.B). The DAMP is the programmatic document that outlines the major programs and policies that comprise the urban runoff management program as implemented individually and collectively by the permittees. Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

> discharges that are a serious threat to public health or the environment are eliminated immediately.[467]

Additionally, the permittees were required by Section V.F of the prior permit to annually evaluate the effectiveness of their stormwater ordinances and enforcement practices in prohibiting IC/IDs to the MS4s.[468] Section VI.C and Appendix 3, Section IV.B.2 of the prior permit further required the permittees to annually evaluate and report on the effectiveness of the control measures established under the IC/ID program and the DAMP,[469] and Appendix 3, Section IV.B required the permittees to similarly evaluate and report on the effectiveness of their monitoring programs, along with any proposed revisions.[470]

The prior permit also required the permittees to educate the public on illicit discharges and pollution prevention, including continuing "to implement the public education efforts already underway" and implementing "the most effective elements of the public and business education strategy contained in the Storm Water/Clean Water Protection Program,"[471] developing public education materials to encourage reporting of illegal dumping,[472] and developing BMP guidance, as follows:

> Within eighteen (18) months of this Order's adoption, the Permittees shall develop BMP guidance for the household use of fertilizers, pesticides, and other chemicals, mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. Additionally, BMP guidance shall be developed for categories of discharges listed in Section II.C, identified to be significant sources of pollutants unless appropriate BMPs are implemented. These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings, and/or mail.[473]

---

[467] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 19, emphasis added.

[468] Exhibit A, Test Claim, filed January 31, 2011, page 383 (Order No. R8-2002-0011, Section V.F).

[469] Exhibit A, Test Claim, filed January 31, 2011, pages 385 (Order No. R8-2002-0011, Section VI.C), 427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section IV.B.2).

[470] Exhibit A, Test Claim, filed January 31, 2011, page 428 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section IV.B.4).

[471] Exhibit A, Test Claim, filed January 31, 2011, page 407 (Order No. R8-2002-0011, Section X.E).

[472] Exhibit A, Test Claim, filed January 31, 2011, page 408 (Order No. R8-2002-0011, Section X.G).

[473] Exhibit A, Test Claim, filed January 31, 2011, page 408 (Order No. R8-2002-0011, Section X.H).

The prior permit's Monitoring and Reporting Program required the permittees to implement and revise the Consolidated Program for Water Quality Monitoring (CMP) to attain specified objectives, which included identifying significant water quality problems, identifying and prohibiting IC/IDs, verifying and controlling illegal discharges, and identifying and verifying sources of pollutants.[474]

The prior permit further required the permittees to conduct dry weather monitoring, as further explained below, and to focus monitoring efforts in "areas with elevated pollutant concentrations," pending approval of the revised CMP, and required the District, in coordination with the Regional Board, to identify monitoring locations in those areas with elevated pollutant concentration within six months of adoption of the permit.[475] As the test claim permit Fact Sheet explains:

> During the first term MS4 Permit and part of the second term MS4 Permit, the Permittees conducted monitoring of the Urban Runoff flows, Receiving Water quality, and sediment quality. The Santa Ana Phase I NPDES Monitoring Program began in November 1991 with 27 monitoring sites. The program has been reduced in phases to more specifically address Urban Runoff program needs and to redirect monitoring resources to TMDL-related activities. There was a time where samples were collected on a rotational basis with no consistent monitoring from year to year. *On April 14, 2003, with the submittal of an Interim Monitoring Program, monitoring at seven core sampling locations (Sampling Stations 040, 316, 318, 364, 702, 707, and 752) was established that provided representative and consistent monitoring results for the Permit Area*.[476]

Thus, beginning April 14, 2003, the prior permit established monitoring at seven core sampling locations throughout the permittees' jurisdictions.[477]

The prior permit also required the revised CMP to identify a "procedure for the collection, analysis, and interpretation of existing data from local, regional or national monitoring programs" and to contain the following information:

---

[474] Exhibit A, Test Claim, filed January 31, 2011, pages 422-424 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program]).

[475] Exhibit A, Test Claim, filed January 31, 2011, pages 422-425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program]).

[476] Exhibit A, Test Claim, filed January 31, 2011, page 345 (test claim permit, Appendix 6 [Fact Sheet], Section VIII.Q).

[477] The seven core monitoring locations are located at the following outfalls: Corona Storm Drain (040); Sunnymead Channel (316); Hemet Channel (318); Magnolia Center (364); University Wash Channel (702); North Norco Channel (707); and Perris Line J (752). Exhibit N, Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, Appendix B, Attachment B-1, pages B-8 through B-21 (AR 37558-37571).

a. The number of monitoring stations;

b. Monitoring locations within MS4s, major outfalls, and Receiving Waters; Environmental indicators (e.g., ecosystem, flow, biological, habitat, chemical, sediment, stream health, etc.) chosen for monitoring;

c. Total number of samples to be collected from each station, frequency of sampling during wet and dry weather, short duration or long duration storm events, type of samples (grab, 24-hour composite, etc.), justification for composite versus discrete sampling, type of sampling equipment, quality assurance/quality control procedures followed during sampling and analysis, analysis protocols to be followed (including sample preparation and maximum reporting limits), and qualifications of laboratories performing analyses;

d. A procedure for analyzing the collected data and interpreting the results including an evaluation of the effectiveness of the management practices, and need for any refinement of the WQMPs or the DAMP.

e. Parameters selected for field screening and for laboratory work; and

f. A description of the responsibilities of all the participants in this program, including cost sharing.[478]

The prior permit further specified that "[a]ll sample collection, handling, storage, and analysis shall be in accordance with test procedures under 40 CFR Part 136 (latest edition) "Guidelines Establishing Test Procedures for the Analysis of Pollutants," promulgated by the USEPA," minimum monitoring requirements established by the State Board pursuant to Water Code section 13383.5, or more sensitive methods approved by the Executive Officer.[479]

Under the revised CMP, both mass emissions monitoring and microbial monitoring required the permittees to conduct dry weather monitoring.[480] In order to estimate mass emissions from the MS4, assess trends associated with urban runoff, and determine if urban runoff was contributing to exceedances of water quality objects or beneficial uses in receiving waters "by comparing results to the Basin Plan,"[481] mass emissions monitoring required the following:

> Representative samples from the first storm event and two more storm events shall be collected during the rainy season. *A minimum of three dry-*

[478] Exhibit A, Test Claim, filed January 31, 2011, page 427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C.3).

[479] Exhibit A, Test Claim, filed January 31, 2011, page 422 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program]).

[480] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B).

[481] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.1).

> *weather samples shall also be collected.* Samples from the first rain event each year shall be analyzed for the entire suite of priority pollutants. *All samples must be analyzed for* metals, pH, TSS, TOC, pesticides/herbicides, and *constituents that are known to have contributed to impairment of local receiving waters.* Dry weather samples should also include an analysis for oil and grease. Sediments associated with mass emissions should be analyzed for constituents of concern identified in the water analyses.[482]

And microbial monitoring, which was used "to determine the sources of bacteriological contamination in the Upper Santa Ana River…developed in collaboration with the MS4 Permittees in San Bernardino County," required "wet and dry weather monitoring, as appropriate, for bacteriological constituents in the Santa Ana River and its tributaries."[483]

According to the test claim permit, annual reports submitted during the prior permit term indicated exceedances of water quality objectives for each core monitoring station, and that the permittees "identified nutrients and bacteria as priority constituents for initial corrective actions."[484] Furthermore, as the prior permit explains:

> The water quality assessment conducted by Regional Board staff has identified a number of beneficial use impairments due, in part, to agricultural and Urban Runoff. Section 303(b) of the CWA requires each of California's Regional Water Quality Control Boards to routinely monitor and assess the quality of waters of their respective regions. If this assessment indicates that beneficial uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an impaired waterbody ("Impaired Waterbody"). *The 1998 water quality assessment listed a number of water bodies within the Permit Area as impaired pursuant to Section 303(d). In the Permit Area, these include: Canyon Lake (for nutrients and pathogens); Lake Elsinore (for nutrients, organic enrichment/low D.O., unknown toxicity and sedimentation); Lake Fulmer (for pathogens); Santa Ana River, Reach 3 (for nutrients, pathogens, salinity, TDS, and chlorides); and Santa Ana River, Reach 4 (for pathogens).* However, the Regional Board now recognizes that Reach 3 of the Santa Ana River is meeting the standards for nutrients, salinity, TDS

[482] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.1.c), emphasis added.

[483] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.2).

[484] Exhibit A, Test Claim, filed January 31, 2011, page 144 (test claim permit, Section II.E).

and chlorides and has requested that this Reach be de-listed for these constituents in the 2002 CWA 303(d) list.[485]

The prior permit states that "The DAMP (at page 2-4, 1993) indicates that lead, copper, manganese, zinc, BOD, hardness, and nitrates[486] for some of the dry weather samples analyzed exceeded the water quality objectives in samples collected prior to the DAMP."[487] Furthermore, a 2004 report by the U.S. Geological Survey on the concentrations of dissolved solids and nutrients in water sources and streams of the Santa Ana Basin based on data collected between October 1998 and September 2001, states as follows: "In the Santa Ana Basin, which is home to over 4 million people, dissolved solids and nutrients (specifically inorganic nitrogen) have been identified as primary water-quality concerns (California Regional Water Quality Control Board, 1995)."[488]

Thus, the prior permit required the permittees to conduct dry weather monitoring for "constituents that are known to have contributed to impairment of local receiving waters" including nitrogen and total dissolved solids, which, effective April 14, 2003, they had to perform at seven core monitoring stations.

The prior permit also required the permittees to review and update their IC/ID reconnaissance strategies as a component of their monitoring program, and to work with the Regional Board "to develop a comprehensive database to include enforcement actions for storm water violations and unauthorized, non-storm water discharges that can then be used to more effectively target reconnaissance efforts."[489] The permittees adopted the recommended strategies and procedures for field reconnaissance and dry weather monitoring set forth in the revised CMP to comply with the prior permit's monitoring program requirements.[490]

---

[485] Exhibit A, Test Claim, filed January 31, 2011, page 366 (Order No. R8-2002-0011, Finding 17).

[486] Nitrate is a form of nitrogen, and lead, copper, manganese and zinc are components of total dissolved solids. See Exhibit A, Test Claim, filed January 31, 2011, page 315 (test claim permit, Appendix 6 [Fact Sheet], Section V.B.2.c ["Other water quality problems along this reach of the River include the buildup of total dissolved solids (TDS, dissolved salts or minerals) and nitrogen, largely in nitrate form"]).

[487] Exhibit A, Test Claim, filed January 31, 2011, page 371 (Order No. R8-2002-0011, Finding 33).

[488] Exhibit N (9), Excerpt from U.S. Geological Survey, Concentrations of Dissolved Solids and Nutrients in Water Sources, Selected Streams of the Santa Ana Basin, California, October 1998–September 2001, 2004, page 2.

[489] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[490] Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, pages 16-39.

b. Sections IX.D, IX.H, and Appendix 3, Section III.E.3 of the test claim permit impose some new requirements on the permittees.

i. The requirements in Section IX.D, to review and revise their IC/ID program to include a "proactive" illicit discharge detection and elimination program using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or equivalent, consistent with Section IX.E, and to report the result of their review in the annual report are new. However, the requirement in Section IX.E, to perform the five specified IDDE activities, is not new.

Sections IX.D and IX.E of the test claim permit read as follows:

> D. Within 18 months of adoption of this Order, the Permittees shall review and revise their IC/ID program to include a pro-active IDDE using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program consistent with Section IX.E below. The result of this review shall be reported in the Annual Report and include a description of the Permittees' revised pro-active program, procedures and schedules. The LIP shall be updated accordingly.[491]
>
> E. The Permittees' revised IC/ID programs shall specify an IDDE program for each Co-Permittee to individually, or in combination:
>
> a. Develop an inventory and map of Permittee MS4 facilities and Outfalls to Receiving Waters.
>
> b. Develop a schedule to be submitted within 18 months to conduct and implement systematic investigations of MS4 open channels and Major Outfalls.
>
> c. Use field indicators to identify potential Illegal Discharges, if applicable;
>
> d. Track Illegal Discharges to their sources where feasible; and
>
> e. Educate the public about Illegal Discharges and Pollution Prevention where problems are found.[492]

Consistent with federal law and the prior permit, the test claim permit prohibits illicit connections and non-stormwater discharges from entering the MS4.[493] To comply with this discharge prohibition, Section IX.D requires the permittees, within 18 months of adoption of the test claim permit, to perform a one-time review and revision of their illicit

---

[491] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[492] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[493] Exhibit A, Test Claim, filed January 31, 2011, page 181 (test claim permit, Section V.A and V.C).

connections and illegal discharges (IC/ID) program for the purpose of including a proactive illicit discharge detection and elimination (IDDE) program, and to perform that review and revision using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection[494] or any other equivalent program.[495] Section IX.D further specifies that the proactive IDDE program must be consistent with Section IX.E of the test claim permit, and that the permittees are required to include the results of that one-time review in the annual report, along with a description of the permittees' revised proactive IDDE program, procedures, and schedules.[496] Section IX.E does not independently impose any requirement on the permittees to review and revise their IC/ID programs, but rather sets forth a list of five activities that must be included in the IDDE program element of the revised IC/ID program – the minimum activities comprising the "proactive IDDE program" referenced in Section IX.D ("a pro-active IDDE…consistent with Section IX.E").

The test claim permit and Fact Sheet explain that audits conducted during the prior permit term showed that the IC/ID program was primarily performed passively through complaint response and was not proactive. The test claim permit's findings state:

> Even though the Permittees have established the authority and the procedures to detect and eliminate IC/IDs, audits conducted during the term of the 2002 MS4 Permit indicated that *this program element is generally carried out passively* through complaint response. IC/IDs are also detected through inspection programs and maintenance activities. Reports from maintenance inspectors are also typically logged as complaints. This Order requires each Permittee to revise this program element based on the Center for Watershed Protection's Illegal Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments, or equivalent program.[497]

The Fact Sheet adds:

> [W]ith a few exceptions, program evaluations conducted during the third term MS4 Permit showed that *this [IC/ID] program element is primarily complaint driven or an incidental component* of municipal inspections or MS4 inspections for a number of Permittees. This Order requires the

---

[494] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005.

[495] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D). As stated above, the requirement to update the LIP is analyzed separately as part of the test claim permit's LIP requirements.

[496] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[497] Exhibit A, Test Claim, filed January 31, 2011, page 160 (test claim permit, Section II.I.3), emphasis added.

> Permittees to ensure their LIPs describe each Permittee's plan for focused, systematic IC/ID investigations, outfall reconnaissance surveys, indicator monitoring, and track their sources. A proactive Illicit Discharge Detection and Elimination (IDDE) program should be integrated with other LIP program elements as appropriate including: mapping of the Permittees' MS4 to track sources, aerial photography, Permittee inspection programs for construction, industrial, commercial, MS4, Permittee facilities, etc., watershed monitoring, public education and outreach, Pollution Prevention, and rapid assessment of stream corridors to identify dry weather flows and illegal dumping.[498]

The claimants assert that Sections IX.D and IX.E require the permittees "to upgrade their existing IC/ID program in a new way, using the IDDE elements set forth in the IDDE Guidance Manual."[499] The claimants further assert that the Water Board admitted in comments on the Test Claim that the IDDE program requirements imposed a higher level of service when it stated that the test claim permit "requires the development of a *more proactive* IDDE program to *increase* effective control of illicit discharges."[500] In addition, the claimants contend that Section IX.E. requires them to perform the five activities specified in Sections IX.E.a through IX.E.e, and that these requirements are

---

[498] Exhibit A, Test Claim, filed January 31, 2011, page 338 (test claim permit, Appendix 6 [Fact Sheet], Section VIII.F). See also, Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 28, where the Regional Board echoed that program evaluations conducted during the prior permit term "showed that IDDE programs were primarily complaint driven or an incidental component of municipal inspections for a number of the Permittees" and therefore, the test claim permit "requires the development of a *more* proactive IDDE program to increase effective control of illicit discharges."

[499] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 13. Exhibit A, Test Claim, filed January 31, 2011, page 40 (Test Claim narrative). In comments on the Draft Proposed Decision, the claimants interpret the Draft Proposed Decision as concluding that the Section IX.D requirement to update the LIP is *not* new, asserting that "if updating the LIP to incorporate IDDE principles constituted a reimbursable new requirement in Section IV.A.5 [of the test claim permit], the same requirement in Section XI.D [sic] must also be a new requirement."[499] The claimants are in error. Section IV.B.1 of this Discussion, pertaining to the test claim permit's LIP requirements, separately analyzes the requirement in Section IX.D that the "LIP shall be updated accordingly" and concludes that the requirement *is* new and mandates a new program or higher level of service.[499] The remainder of the Section IX.D requirements are analyzed in this Section IV.B.3 of the Discussion.

[500] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 11-12, emphasis in original.

newly mandated by the state.[501] In support of their assertion that Section IX.E. requires the permittees to perform new activities, the claimants cite to a May 11, 2011 letter from the District to the permittees and excerpts from the 2011-2012 annual report.[502] They assert that these documents show that "Section IX.E required a new effort and careful review of their existing IC/ID programs," as follows:

> In May 2011, the District wrote to permittees requesting them to provide additional information on the location of their outfalls, which would both satisfy the inventory and mapping requirement of Section IX.E.a and the inspection scheduling required by Section IX.E.b. See Exhibit 1 to Declaration of Rohini Mustafa, P.E., May 11, 2011 letter to permittees from the District. This letter specifically references Section IX.E of the Test Claim Permit as the reason for the letter and reflects the requirement that the inventory and MS4 maps be upgraded to meet the IDDE program requirements. By reaching out to the permittees in May 2011, the District, and the permittees in response to the letter, were undertaking new tasks in conformance with the requirements of Section IX.E.
>
> In addition, permittees reviewed their IC/ID programs in light of the Test Claim Permit Requirements and the permittees submitted a revised Consolidated Program for Water Quality Monitoring (CMP) to incorporate the IDDE requirements, which was submitted to the Water Board on May 31, 2011 and approved by the Board on March 26, 2012.[503]

While the Regional Board does not dispute that Section IX.D and IX.E require the permittees to develop "a *more* proactive IDDE program," it does not frame the IDDE program requirement as a new program or higher level of service.[504] Instead, the Regional Board asserts that the permittees were already required under federal law and the prior permit to have an IDDE program as part of their IC/ID programs, and that "each of the challenged [IDDE] provisions is specifically recommended in the [U.S. EPA] MS4 Permit Improvement Guide and/or the Center for Watershed Protection IDDE Manual."[505]

---

[501] Exhibit A, Test Claim, filed January 31, 2011, pages 40, 42 (Test Claim narrative), 67, 75, 81 87, 93, 98, 105, 111, 117 (Test Claim supporting declarations); Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 14.

[502] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 15, 47-51 (May 11, 2011 letter), 53-58 (2011-2012 annual progress report).

[503] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 15.

[504] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 28-30.

[505] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 28-29.

For the reasons below, the Commission finds that the following one-time activities imposed by Section IX.D. of the test claim permit are new when compared to prior law:

- Within 18 months of adoption of this Order, the Permittees shall review and revise their IC/ID program to include a pro-active IDDE using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program consistent with Section IX.E.
- Report the result of the review required by Section XI.D of the test claim permit in the annual report and include a description of the permittees' revised pro-active IDDE program, procedures, and schedules.

Federal law requires stormwater management programs to include an IC/ID program ("a program, including a schedule, to detect and remove…illicit discharges and improper disposal into the storm sewer[506]), which U.S. EPA characterizes as requiring the permittees to develop a "comprehensive, proactive Illicit Discharge Detection Elimination (IDDE) program.[507] Federal law also requires the permittees to annually report on the status of implementing the components of their stormwater management programs, which include the IC/ID program, as well as any proposed changes to those components or revisions to the assessment of controls that are necessary to comply with water quality standards.[508] Federal law also requires the permittees to assess their controls.[509]

The prior permit required the permittees to annually review and evaluate the effectiveness of their stormwater ordinances and enforcement practices in prohibiting IC/IDs to the MS4s;[510] the control measures established under the IC/ID program and the Drainage Area Management Plan (DAMP) (the overall stormwater management programmatic document which, in part, outlines the permittees' IC/ID program[511]);[512]

---

[506] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B).

[507] Exhibit N (23), Excerpts from U.S. EPA, MS4 Permit Improvement Guide, April 14, 2010, page 2.

[508] Code of Federal Regulations, title 40, section 122.42(c).

[509] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

[510] Exhibit A, Test Claim, filed January 31, 2011, page 383 (Order No. R8-2002-0011, Section V.F).

[511] Exhibit A, Test Claim, pages 412 (Order No. R8-2002-0011, Section XIII.B), 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]). Chapter 4 of the DAMP pertains to elimination of IC/IDs. See Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 16-24.

[512] Exhibit A, Test Claim, filed January 31, 2011, pages 385 (Order No. R8-2002-0011, Section VI.C), 427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section IV.B.2).

and their monitoring programs.[513] Additionally, the prior permit's Monitoring and Reporting Program required the permittees to review their reconnaissance strategies to identify and prohibit IC/IDs.[514]

While the permittees were already required under prior law to review and report on their IC/ID program, they were not previously required to undertake a separate, one-time review and revision of the IC/ID program for the specific purpose of developing a proactive IDDE program *using* the Center for Watershed Protection's Guidance Manual or an equivalent program.

In addition, the requirement to report the result of the review of their IDDE program in the annual report is likewise a new, one-time requirement. The claimants allege, however, that the requirement in Section IX.D. is to "annually" review and evaluate the revised IC/ID programs and to report those evaluations as part of their annual reports on an ongoing basis.[515] This reading is not consistent with the plain language of Section IX.D, which states *"[t]he result of this review shall be reported in the Annual Report* and include a description of the Permittees' revised pro-active program, procedures and schedules." Moreover, the requirement to annually review their IC/ID program and to include those findings in each annual report is required by Section IX.G. of the test claim permit; a separate section of the permit that was *not* pled by the claimants.[516]

The Commission further finds that Section IX.E. does *not* newly require the claimants to perform the activities enumerated in Sections IX.E.a through IX.E.e as part of the proactive IDDE program. Section IX.E. states that the claimants' IC/ID programs shall specify an IDDE program for each Co-Permittee to individually, or in combination:

> a. Develop an inventory and map of Permittee MS4 facilities and Outfalls to Receiving Waters.
>
> b. Develop a schedule to be submitted within 18 months to conduct and implement systematic investigations of MS4 open channels and Major Outfalls.
>
> c. Use field indicators to identify potential Illegal Discharges, if applicable;
>
> d. Track Illegal Discharges to their sources where feasible; and

---

[513] Exhibit A, Test Claim, filed January 31, 2011, page 428 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section IV.B.4).

[514] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[515] Exhibit A, Test Claim, filed January 31, 2011, page 42 (Test Claim narrative).

[516] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.G).

e. Educate the public about Illegal Discharges and Pollution Prevention where problems are found.[517]

The claimants had to perform these activities under prior law.

The prior permit's IC/ID program required the co-permittees to prohibit illicit connections and illegal discharges to the MS4s through their stormwater ordinances (and the principal permittee through its statutory authority);[518] to "implement and improve" their routine inspection, monitoring, and reporting programs;[519] and to investigate and eliminate IC/IDs detected through routine inspections and dry weather monitoring.[520] If routine inspections or dry weather monitoring indicated illicit connections or illegal discharges, they had to be investigated and eliminated or permitted within sixty (60) calendar days of receipt of notice by its staff or from a third party.[521] The prior permit also required the permittees to continue to implement control measures to reduce and eliminate illicit discharges from the MS4 to the receiving waters and to inspect MS4 facilities for evidence of illicit discharges.[522]

Furthermore, as stated in the Fact Sheet, before the prior permit term, the permittees were required to perform illicit discharge detection and elimination (IDDE) activities, which included surveying their MS4s, dry weather monitoring, and identifying and eliminating all illicit connections.[523]

> Federal regulation, 40 CFR 122.26(d)(2(iv)(B), requires the Permittees to eliminate illicit discharges to the MS4s. The Permittees have completed a survey of the MS4 and eliminated or permitted all identified Illicit Connections. The Permittees have also established a program to address Illegal Discharges and a mechanism to respond to spills and leaks and other incidents of discharges to the MS4.[524]

---

[517] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[518] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[519] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[520] Exhibit A, Test Claim, filed January 31, 2011, pages 384-385 (Order No. R8-2002-0011, Sections VI.A, VI.B).

[521] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Sections VI.A).

[522] Exhibit A, Test Claim, filed January 31, 2011, pages 385 (Order No. R8-2002-0011, Section VI.C), 409 (Order No. R8-2002-0011, Sections XI.G, XI.H).

[523] Exhibit A, Test Claim, filed January 31, 2011, page 337 (test claim permit, Appendix 6 [Fact Sheet].

[524] Exhibit A, Test Claim, filed January 31, 2011, page 337 (test claim permit, Appendix 6 [Fact Sheet].

The requirement in Section IX.E.a, to develop an inventory and map of permittee MS4 facilities and outfalls to receiving waters, is not new.[525] Federal law requires the permit to include a map with locations of known MS4 outfalls.[526] The prior permit states that the permittees previously identified major outfalls and submitted maps of existing MS4s.

> The Permittees have identified major outfalls (with a pipe diameter of 36 inches or greater or drainage areas draining 50 acres or more) and have submitted maps of existing MS4s. The Co-Permittees reported having approximately 153.3 miles of underground storm drains, and 21.3 miles of channels. The RCFC&WCD reported having 135 miles in underground storm drains and 133 miles of channels.[527]

"Permittee MS4 facilities" consist of open channels, underground storm drains, and underground pipes, all of which the permittees identified in the 2007 Report of Waste Discharge (ROWD):

> The MS4 facilities operated by the District consist of an estimated 134 miles of drainage facilities (59 miles open channel and 75 miles of underground storm drain). The MS4 facilities operated by the Co-Permittees are approximately 460 miles (395 miles of underground pipe and 65 miles open channel) in length. Maps depicting the location of the Permittees' MS4 facilities are included as Appendix D.[528]

The permittees compiled this inventory of permittee MS4 facilities, along with updated maps, in compliance with the following prior permit requirement:

> The ROWD shall, at a minimum, include the following:…3. Changes in land use and/or population including map updates; and 4. Significant changes to the MS4s, outfalls, detention or retention basins or dams, and other controls, including map updates of the MS4s.[529]

Thus, the requirement in Section IX.E.a, to develop an inventory and map of permittee MS4 facilities and outfalls, is not new.

The requirement in Section IX.E.b, to develop a schedule to conduct and implement systematic investigations of MS4 open channels and major outfalls, is not new.[530]

---

[525] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[526] Code of Federal Regulations, title 40, section 122.26(d)(1)(iii)(B)(1).

[527] Exhibit A, Test Claim, filed January 31, 2011, page 367-368 (Order No. R8-2002-0011, Finding 21).

[528] Exhibit N (22), Excerpts from Santa Ana River Region, Report of Waste Discharge, April 2007, page 2.

[529] Exhibit A, Test Claim, filed January 31, 2011, page 415 (Order No. R8-2002-0011, Section XVI.A).

[530] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim, Section IX.E).

Federal law requires the permittees, as Part 1 of the permit application, to identify known MS4 outfalls discharging to waters of the United States, and a field screening analysis of for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application."[531] Federal law also requires the permittees, as Part 2 of the permit application, to develop procedures, including a schedule, for investigating portions of the MS4 that indicate a "reasonable potential" for containing illicit discharges, as follows.

> A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation).[532]

Thus, federal law requires the permittees to conduct a field screening analysis for IC/IDs at "either selected field screening points or major outfalls," to use the results of that analysis to determine which portions of the MS4s have a "reasonable potential" for containing illicit discharges, and to develop an IC/ID investigation schedule.[533]

In addition, the prior permit required the permittees to investigate IC/IDs when indicated by routine inspections or dry weather monitoring.[534] And the permittees had already identified major outfalls and channels under the prior permit.[535] The prior permit also required "open channels and other aboveground elements of the MS4" to be routinely inspected as part of construction, commercial, industrial, and drainage facility inspections, and required the permittees to clean open channel MS4s where there is evidence of illegal discharge.[536]

Thus, open channels and major outfalls are portions of the MS4 that "indicate a reasonable potential of containing illicit discharges or other sources of non-storm water,"

---

[531] Code of Federal Regulations, title 40, sections 122.26(d)(1)(iii), 122.26(d)(1)(iv)(D).

[532] Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B), 122.26(d)(2)(iv)(B)(3).

[533] Code of Federal Regulations, title 40, sections 122.26(d)(1)(iv)(D), 122.26(d)(2)(iv)(B).

[534] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[535] Exhibit A, Test Claim, filed January 31, 2011, pages 367-368 (Order No. R8-2002-0011, Finding 21).

[536] Exhibit A, Test Claim, filed January 31, 2011, pages 409-410 (Order No. R8-2002-0011, Sections XI.G and XI.H).

and a schedule to conduct investigation for illicit discharges therein is required under federal law. Therefore, the requirement in Section IX.E.b, to develop a schedule to conduct and implement systematic investigations of MS4 open channels and major outfalls, is not new.

The requirement in Section IX.E.c to use field indicators to identify potential illegal discharges is not new.[537] The federal regulations require the permittees to conduct a field screening analysis for the potential presence of illicit discharges, which must include visual inspections made during dry weather periods and, when flow is observed, collection and testing of samples to confirm the presence of an illicit discharge.

> At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate.[538]

Under the prior permit, the permittees were required to investigate IC/IDs when discovered through routine inspections and dry weather monitoring.[539] The prior permit also required the permittees to revise and implement the Consolidated Program for Water Quality Monitoring (CMP),[540] and required the revised CMP to address a number

---

[537] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[538] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

[539] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[540] Exhibit A, Test Claim, filed January 31, 2011, pages 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C). The 2008 version of the CMP is the second major revision to the original, released in 1994. The first major revision occurred in 2003, following adoption of the prior permit.

> The original CMP was drafted in March 1994 and was included with the application materials for the previous round of NPDES MS4 permits (MS4 permits). The CMP was accepted as part of the applications for MS4 permit renewal by the Colorado, San Diego and Santa Ana RWQCB in 1995. Subsequently, the RWQCBs directed the Riverside County Permittees to implement the CMP in the "second round" MS4 permits. In addition, in reissuing the second round MS4 permit for the Santa Margarita Region, USEPA Region IX directed the implementation of the

of monitoring components, including the total number of samples to be collected from each monitoring station, the frequency of sampling during dry weather, and the parameters selected for field screening.[541] As part of mass emissions monitoring, the prior permit's CMP required the permittees to collect a minimum of three dry-weather samples and to analyze those samples for "metals, pH, TSS, TOC, pesticides/herbicides, and constituents that are known to have contributed to impairment of local receiving waters."[542] The Santa Ana region element of the CMP specifies the types of parameters that must be utilized as part of dry weather monitoring or IC/ID detection, at least five of which are among those needed to confirm the presence of an illicit discharge according to the Guidance Manual.[543]

> CMP. The CMP was updated in 2004 to more effectively address the monitoring program objectives and the requirements of the third-round MS4 permits issued by the Santa Ana and San Diego RWQCBs in 2002 and 2004, respectively. This 2008 update of the CMP incorporates the monitoring program objectives and requirements of the third-round MS4 permit issued by the Colorado RWQCB in May 2008.

Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring (CMP), Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, page 2.

[541] Exhibit A, Test Claim, filed January 31, 2011, pages 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C).

[542] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.1.c).

[543] Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, pages 38-39. Table B-4 lists the following relevant parameters as dry weather sampling requirements for the Santa Ana Region:

- pH
- TSS [total suspended solids]
- Oil & Grease
- Boron
- Copper
- Total Coliforms
- Fecal Coliforms
- Fecal Streptococcus
- E. coli

Appendix B, Attachment B-3 contains monitoring summary tables for core stations in the Santa Ana River Watershed and lists the following under "field parameters" for dry weather monitoring:

- Flow
- Conductance, Specific

Nothing in the broad and open-ended language of Section IX.E.c ("Use *field indicators* to identify potential Illegal Discharges, *if applicable*"[544]) requires the permittees to perform additional activities beyond the field screening data collection and analysis they were required to perform under the prior permit and federal law. Therefore, the requirement in Section IX.E.c, to use field indicators to identify potential illegal discharges, is not new.

The requirement in Section IX.E.d, to track illegal discharges to their sources where feasible, is not new.[545] The test claim permit does not explain the phrase "track illegal discharges," and therefore reliance on the Guidance Manual is necessary to understand what the Regional Board intended this provision to mean. The Guidance Manual classifies monitoring techniques into three major categories: (1) the outfall reconnaissance inventory (ORI);[546] (2) indicator monitoring at stormwater outfalls and in-stream; and (3) *tracking discharges to their source*.[547] "Once illicit discharge problems are found, the next step is to trace them back up the pipe to isolate the specific source or improper connection that generates them."[548] The Guidance Manual discusses four investigation options for tracking illegal discharges to their sources: storm drain network investigation; drainage area investigation; on-site investigation; and

---

- Turbidity
- pH
- Temperature
- Oxygen, Dissolved

[544] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E.c), emphasis added.

[545] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[546] The Outfall Reconnaissance Inventory (ORI) is the primary field screening tool "used to find illicit discharge problems and develop a systematic outfall inventory and map of the MS4." Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 11.

[547] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 6.

[548] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 8.

septic system investigation, and explains that "[o]nce an illicit discharge is found, a combination of methods is used to isolate its specific source."[549]

Federal law requires the permittees to have procedures in place for investigating portions of the MS4 that "indicate a reasonable potential of containing illicit discharges," and uses dye testing and in-storm sewer inspections as examples of such procedures to identify and eliminate the source,[550] both of which are comparable to IC/ID source tracking methods discussed in the Guidance Manual.[551]

In addition, the prior permit requires the permittees to investigate illegal discharges when discovered through routine inspections or dry weather monitoring,[552] and the prior permit's CMP specifies that investigating a potential IC/ID incident requires tracing the discharge as far upstream as possible.[553]

Therefore, the requirement in Section IX.E.d, to track illegal discharges to their sources where feasible, is not new.

---

[549] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 12.

[550] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(3).

[551] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 12 (compare, e.g.: *on-site investigation methods*, which "may involve dye, video or smoke testing within isolated segments of the storm drain network"; and *storm drain network investigation methods*, which involve "progressive sampling at manholes in the storm drain network to narrow the discharge to an isolated pipe segment between two manholes" with Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(3) ["such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; *testing with fluorometric dyes*; or conducting in storm sewer inspections where safety and other considerations allow"], emphasis added).

[552] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[553] Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, pages 11-12. The prior permit required the permittees to implement the CMP. Exhibit A, Test Claim, filed January 31, 2011, pages 422 and 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Sections I.F and III.C, respectively).

Finally, the requirement in Section IX.E.e, to educate the public about illegal discharges and pollution prevention where problems are found, is not new.[554] The permittees were already required under federal law to publicize and facilitate public reporting of illicit discharges and water quality impacts of illicit discharges, and to educate the public about preventing pollution from used oil and toxic materials.[555] The federal regulations require stormwater management programs to describe priorities for implementing controls, including:

> A description of a program, including a schedule, to detect and remove…illicit discharges and improper disposal into the storm sewer. The proposed program shall include:
>
> [¶…¶]
>
> (5) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;
>
> (6) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials.[556]

Furthermore, the prior permit required the permittees to educate the public on illicit discharges and pollution prevention, including developing materials on illegal dumping and BMP guidance for household use of fertilizers, pesticides, and other chemicals, mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting.[557]

The DAMP, which specifies the major programs and policies that the permittees must implement as part of the overall urban runoff management program, contains an extensive public education and outreach program, of which pollution prevention is a major focus.[558] The program included educating the public on, among other things, illegal dumping, disposing household hazardous waste, and specific targeted

---

[554] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.E).

[555] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(5), (6).

[556] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(5), (6).

[557] Exhibit A, Test Claim, filed January 31, 2011, page 407 (Order No. R8-2002-0011, Section X).

[558] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37. The prior permit required the permittees to implement the DAMP and its components. Exhibit A, Test Claim, filed January 31, 2011, pages 413 (Order No. R8-2002-0011, Section XV.A.3) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order"), 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

pollutants.[559] The public education program is implemented at a countywide, regional and local level and consists of three categories: public behavior, business activity, and potential pollutants.[560]

The public behavior program component is implemented "to foster broad public awareness of water pollution concerns; increase public acceptance of pollution prevention activities to curtail everyday human behaviors that contribute to water quality problems; and to promote stewardship of local water resources."[561] It includes school education outreach; brochures regarding illegal dumping, disposal of Household Hazardous Waste and Antifreeze, Batteries, Oil and Paint disposal information, lawn and garden maintenance, car washing, fertilizer, pesticide and household chemical use, pet care, and home garden care; outreach materials to promote pollution prevention activities; a countywide 1-800 hotline number to encourage the public to report clogged storm drains, faded or missing catch basin stencils and illegal dumping from residential, industrial, construction and commercial sites into public streets, storm drains and waterbodies; website that provides information on how to report illegal dumping, clogged storm drains and lack of curb markers, as well as general information about Urban Runoff pollution prevention techniques.[562]

In regard to the potential pollutants education program component, the DAMP states that the District has developed a number of outreach methods to address specific targeted pollutants such as fertilizers, pesticides, household hazardous waste chemicals, antifreeze, oil, batteries, and paint," including partnering with Riverside County Waste Management, public outreach events, brochures and mailing inserts, a 1-800 hotline and website for reporting illegal dumping, clogged storm drains, and obtaining information on household hazardous waste disposal and upcoming public participation activities, media outreach, and other outreach materials to promote pollution prevention activities.[563] Additionally, the business education program specifically targets businesses whose activities involve potential pollutants, such as mobile detailing, automotive service center, and restaurant cleaning operations, and provides outreach to business associations.[564]

---

[559] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

[560] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 39-40.

[561] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 40.

[562] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 40-42.

[563] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 43-44.

[564] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 42.

Therefore, the requirement in Section IX.E.e, to educate the public about illegal discharges and pollution prevention where problems are found, is not new because the permittees were already required to perform these activities under the prior permit and federal law.

Although the claimants may have incurred additional costs to comply with these existing requirements following their review of their IDDE program, increased costs alone are not determinative of the issue of whether Section IX.E imposes a reimbursable state-mandated program under article XII B, section 6.[565]

Thus, the IDDE program requirements specified in Section IX.E of the test claim permit do not impose any new activities on the permittees.

Accordingly, Section IX.D imposes the following new one-time requirements on the permittees:

- Within 18 months of adoption of the test claim permit, review and revise the IC/ID program to include a pro-active illicit discharge detection and elimination program, using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program, consistent with Section IX.E of the test claim permit.[566]
- Report the result of the review required by Section XI.D of the test claim permit in the annual report and include a description of the permittees' revised pro-active IDDE program, procedures, and schedules.[567]

ii. The requirement in Section IX.H, to maintain and update a database summarizing IC/ID incident response, except those that result in an enforcement action, is new. However the requirement in Section IX.H, to submit summaries of IC/ID incident response with the annual report, is not new.

Section IX.H of the test claim permit states as follows:

> The Permittees shall maintain a database summarizing IC/ID incident response (including IC/IDs detected as part of field monitoring activities). This information shall be updated on an ongoing basis and submitted with the Annual Report.[568]

---

[565] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; see also, *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 735.

[566] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[567] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[568] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

By its plain language, Section IX.H requires the permittees to maintain an up-to-date database of their responses to both reported and detected IC/IDs, and to include that information in the annual report.[569]

The Draft Proposed Decision found that the requirements in Section IX.H were not new because the permittees were already required under prior law to maintain data and annually report on IC/ID incident responses. In comments on the Draft Proposed Decision, the claimants assert that the Section IX.H requirements are not the same as the "more limited" database and annual reporting requirements of the prior permit.[570] They assert that that the prior permit did not require the permittees to "maintain a specific IC/ID incident response database," but rather, at most, required "a summary of IC/ID investigations" in the annual report and coordination with the Regional Board to develop "a database of enforcement actions for stormwater violations and unauthorized, non-stormwater discharges."[571] Similarly, the federal regulations only required the collection of data on IC/ID inspections and investigations, with summaries in the annual report.[572]

The Regional Board's comments do not specifically address the incident response and database reporting requirements under Section IX.H, beyond asserting generally that each of the challenged IDDE program provisions were specifically recommended in the U.S. EPA MS4 Permit Improvement Guide or the Center for Watershed Protection's Guidance Manual.[573]

Upon further examination and for the reasons set forth below, the Commission finds that some of the activities required under Section IX.H of the test claim permit are new.

Federal law requires the permittees to identify and eliminate illicit discharges through inspection, field screening, and investigation activities, and to summarize in the annual report data collected throughout the year, as well as the *number* and *nature* of enforcement actions and inspections.[574] Thus, the permittees are already required under federal law to maintain data on their IC/ID inspection and investigation activities and to summarize that data in the annual report.

---

[569] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

[570] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 16-17.

[571] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 17.

[572] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 17.

[573] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 29.

[574] Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B); 122.42(c)(4), (6).

The prior permit required the permittees to "continue to prohibit illicit connections and illegal discharges to the MS4s through their Storm Water Ordinances"[575] and to immediately investigate all spills, leaks, and illegal discharges.[576] In addition to continuing "to implement and improve routine inspection monitoring and reporting programs," if IC/IDs were indicated through routine inspections or dry weather monitoring, the permittees were required to investigate, and either eliminate or permit them, and had to include a summary "of these actions" in the annual report.[577] The prior permit also required the permittees to work with the Regional Board to create a database of enforcement actions "for stormwater violations and unauthorized non-stormwater discharges."[578] As stated in the prior permit's Monitoring and Reporting Program, "the Permittees shall coordinate with the Regional Board to *develop a comprehensive database to include enforcement actions for storm water violations and unauthorized, non-storm water discharges* that can then be used to more effectively target reconnaissance efforts."[579] The test claim permit Fact Sheet explains that "[d]etected IC/IDs from monitoring data or field inspections are reported to the District's NPDES section, logged into [the District's] complaint database, and reported to the appropriate Permittee for follow up action."[580]

Therefore, consistent with federal law, the prior permit required the permittees to maintain information on and annually report a summary of their responses to both reported "spills, leaks, and illegal discharges" (i.e., IC/ID "incidents") and IC/IDs detected through inspections and monitoring. Furthermore, under the prior permit, the permittees were required to develop a comprehensive database of IC/ID enforcement actions, and the Fact Sheet states that IC/IDs detected from monitoring or field inspections were similarly logged into a complaint database maintained by the District.

By its plain language, Section IX.H requires a database of IC/ID "incident response," which includes IC/IDs detected as part of field monitoring activities, but is not otherwise defined.[581] In fact, Section IX.H is the only place in the test claim permit where the

---

[575] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[576] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.B).

[577] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[578] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[579] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4), emphasis added.

[580] Exhibit A, Test Claim, filed January 31, 2011, pages 337-338 (test claim permit, Appendix 6 [Fact Sheet]).

[581] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

phrase “incident response” is used. Both the prior permit and test claim permit discuss IC/ID “incidents” in the context of requiring IC/IDs that are indicated through routine inspections and dry weather monitoring to be “investigated and eliminated” within sixty days, and all reported spills, leaks, and other illegal discharges to be immediately investigated, meaning that “IC/ID incident response” and “IC/ID investigations” refer to the same set of activities triggered by a report or detection of a potential IC/ID.[582] Therefore, “IC/ID incident response” as used in Section IX.H, refers broadly to IC/IDs detected through monitoring, discovered through routine inspections, and investigated in response to a report or complaint.

The prior permit’s description of IC/ID response protocols shows that permittees were required to track “IC/ID incident response” when tracking IC/ID enforcement actions. The 2006 DAMP, which was made enforceable by the prior permit,[583] in a section entitled “Illegal Discharges Response and Reporting,” describes the “programs in place to respond to illegal discharges," as follows*:*

> Predominantly, illegal discharges are reported by the public or by Permittee field personnel. Appropriate Permittee field personnel are trained to identify potential illicit connections and illegal discharges during the course of their normal duties. Illicit connections and illegal discharges may also be determined from complaint calls from the public. …The Permittees also implement wet and dry weather monitoring programs that may indicate the presence of illicit connections or illegal discharges.
>
> … Each Permittee also has code enforcement or other trained staff who are assigned the responsibility to respond to illegal discharges or illicit connections…
>
> ***Response***
>
> When put on notice by staff or a third party of a potential illicit connection or illegal discharge…, the Permittee shall immediately determine if it is a threat to human health or the environment. … Based on the Permittee’s initial assessment, the Permittee will take the following actions:
>
> ***Illicit Connections and Illegal Discharges that are Threats to Human Health and the Environment***
>
> ♦ Follow reporting procedures specified below.
>
> ♦ Immediately investigate and remediate the situation and/or coordinate with the appropriate response agencies to remediate the situation

---

[582] Exhibit A, Test Claim, filed January 31, 2011, pages 198 (test claim permit, Sections IX.A, IX.B), 384 (Order No. R8-2002-0011, Sections IV.A, VI.B).

[583] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3) (“The DAMP and amendments thereto are hereby made an enforceable part of this Order”).

♦ Lead or coordinate with other agencies regarding appropriate enforcement against the discharger per the guidelines of Section 3.4.

Non-Threatening Illicit Connections and Illegal Discharges

Permittees meet the following minimum guidelines when responding to reports of non-threatening illegal discharges:

♦ If the reported incident is outside of a Permittee's jurisdiction, referral to the appropriate agency and/or the respective Regional Board will be made within two (2) business days;

♦ Permittees respond to reports of illicit connections or illegal discharges within their jurisdiction within ten (10) business days;

♦ Inspections performed in response to a report are documented appropriately; and

♦ When appropriate, samples of illegal discharges are collected.

Reporting

The Permittees, upon being notified, immediately investigate the circumstances of potential illegal discharges and/or illicit connections to their MS4 to determine if the potential discharge is a threat to human health or the environment as defined above. Based upon their assessment…, the Permittees report all discharges that endanger human health or the environment.[584]

And, in a section entitled "Enforcement for Illicit Connections and Illegal Discharges," the 2006 DAMP further states that "[*i*]*nvestigations* are performed by each Permittee *in response to reports* of illicit connections or illegal discharges received from the public, Permittee staff or other agencies within their jurisdictions.[585]

Thus, under both the prior permit and test claim permit, responding to a report of a potential IC/ID incident is a foundational element of any IC/ID enforcement action. The permittees' inspections and investigations of reported IC/ID "incidents" comprise their IC/ID response and enforcement protocols: if routine inspections or dry weather monitoring indicate illicit connections or illegal discharges, they must be investigated and eliminated as soon as possible, but no later than sixty days, and illicit discharges that are a serious threat to public health or the environment must be eliminated immediately.[586]

---

[584] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 19-20.

[585] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 21.

[586] Exhibit A, Test Claim, filed January 31, 2011, pages 198 (test claim permit, Sections IX.A, IX.B), 384 (Order No. R8-2002-0011, Sections IV.A, VI.B).

The claimants allege that the prior permit and federal regulations only required the permittees to collect data on IC/ID inspections and investigations, with summaries of those investigations in the annual report, and did not require the specific IC/ID incident response database required by Section IX.H.[587] As shown above, the prior permit's IC/ID incident response procedures included investigation of IC/IDs as a preliminary component of responding to reported and detected IC/IDs.[588] Nonetheless, there is no showing that all IC/ID incident responses *necessarily* result in enforcement action. Therefore, while the prior permit required the permittees to develop a database of IC/ID enforcement actions, that database would not necessarily capture all responses to IC/ID incidents, such as "IC/IDs detected as part of field monitoring activities," which are specifically required to be included in the Section IX.H database. Despite the fact that the test claim permit Fact Sheet states that IC/IDs detected "from monitoring data or field inspections" are logged in the District's complaint database, there is no requirement under the prior permit to maintain a database of IC/IDs incident responses unless the incident results in an enforcement action.

Therefore, *except* for those responses that result in an enforcement action, the requirement in Section IX.H of the test claim permit to maintain an up-to-date database summarizing IC/ID incident response, including IC/IDs detected as part of field monitoring activities, is new.

However, the requirement in Section IX.H, to submit IC/ID incident response information with the annual report, is not new. As discussed above, "IC/ID incident response" as used in Section IX.H, includes IC/IDs detected through field monitoring, discovered through routine inspections, and investigated in response to a report or complaint. Both federal law and the prior permit required the permittees to annually report on inspections and investigations of reported IC/ID incidents, as well as IC/IDs detected through field monitoring.[589] Therefore, the permittees were already required under prior law to annually report the same information required under Section IX.H. The fact that Section IX.H requires the permittees to maintain that information in database format does not change the fact that the permittees were already required to perform this annual reporting activity under prior law.

Accordingly, Section IX.H imposes the following new requirements on the permittees:

---

[587] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 17.

[588] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Sections IV.A, VI.B); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 14-21.

[589] Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(B); 122.42(c)(4), (6); Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

- Except for those responses that result in enforcement actions, maintain and update on an ongoing basis a database summarizing IC/ID incident response (including IC/IDs detected as part of field monitoring activities).[590]

iii. The requirements in Appendix 3, Section III.E.3, to review and update the dry and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or equivalent and to establish a baseline dry weather flow concentration for TDS and TIN at each core monitoring location using dry weather monitoring for nitrogen and total dissolved solids, are new. However, Appendix 3, Section III.E.3 does not require the permittees to perform dry weather monitoring for nitrogen or total dissolved solids and even if it did, that activity is not new.

Appendix 3, Section III.E.3 of the test claim permit, as pled, states as follows:

> Illicit Connection/Illegal Discharge (IC/ID) Monitoring: The Permittees shall review and update their Dry Weather and Wet Weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination developed by the Center for Watershed Protection or any other equivalent program. Where possible, the use of GIS to identify geographic areas with a high density of industries associated with gross Pollution (e.g. electroplating industries, auto dismantlers) and/or locations subject to maximum sediment loss (e.g. New Development) may be used to determine areas for intensive monitoring efforts. The Dry Weather monitoring for nitrogen and total dissolved solids shall be used to establish a baseline dry weather flow concentration for TDS and TIN at each Core monitoring location.[591]

The first provision of Appendix 3, Section III.E.3 requires the permittees, as part of the test claim permit's monitoring and reporting program, to review and update their reconnaissance strategies to identify and eliminate IC/IDs using the Center for Watershed Protection's Guidance Manual or an equivalent program.

The Draft Proposed Decision found that the requirements in Appendix 3, Section III.E.3, to review and update the IC/ID reconnaissance strategies, were not new. In comments on the Draft Proposed Decision, the claimants assert that the activity of undertaking a review is itself a new requirement because the permittees were not previously required

[590] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

[591] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E.3).

to use the IDDE Guidance Manual in conducting their review of and update to their IC/ID monitoring strategies.[592] The Commission agrees.

The prior permit required the permittees to "review and update their reconnaissance strategies to identify and prohibit illicit discharges" as a component of IC/ID monitoring.[593] However, the prior permit did not require the "review and update" to be conducted *for the specific purpose* of aligning the IC/ID reconnaissance strategies with the proactive IDDE principles set forth in the Guidance Manual or its equivalent.

Accordingly, the Commission finds that the requirements in Appendix 3, Section III.E of the test claim permit, to perform the one-time activities of reviewing and updating the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination developed by the Center for Watershed Protection or an equivalent program, are new.

The second provision in Appendix 3, Section III.E.3, which pertains to using GIS to identify areas for intensive monitoring, does not impose any requirements on the permittees, as its plain language states that "[w]here possible, the use of GIS…*may* be used to determine areas for intensive monitoring efforts."[594] Nor have the claimants identified this provision in Appendix 3, Section III.E.3 as imposing new requirements on the permittees. Under Water Code section 15, the word "shall" imposes a mandatory duty, while the word "may" is permissive.[595] Thus, the activity in Appendix 3, Section III.E.3, to use GIS to determine areas for intensive monitoring efforts in geographic areas with a high density of industries associated with gross pollution (e.g. electroplating industries, auto dismantlers) and/or locations subject to maximum sediment loss (e.g. new development) is optional due to the provision's permissive language.

The final provision of Appendix 3, Section III.E.3 reads: "The Dry Weather monitoring for nitrogen and total dissolved solids shall be used to establish a baseline dry weather flow concentration for TDS [total dissolved solids] and TIN [total inorganic nitrogen] at each Core monitoring location."[596] By its plain language, this provision requires the permittees to use monitoring data for two constituents to establish a baseline dry weather flow concentration for those constituents at each core monitoring location.

---

[592] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 17-18.

[593] Exhibit A, Test Claim, filed January 31, 2011, page 426 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.4).

[594] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[595] Water Code section 15 (added by Stats. 1943, ch. 368).

[596] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E.3).

While the claimants assert that Appendix 3, Section III.E.3 requires them to conduct new dry weather monitoring activities,[597] the test claim permit frames the required activity as limited to *establishing a baseline*, not performing dry weather monitoring for nitrogen and total dissolved solids. The test claim permit explains that following changes to the region's Water Quality Control Plan, or Basin Plan, to include "new nitrate-nitrogen and TDS objectives," the test claim permit "requires the Permittees *to establish their baseline* discharge concentration for Dry Season conditions."

> 2. More recently, the Basin Plan was significantly amended to incorporate revised boundaries for groundwater subbasins, now termed "management zones", *new nitrate-nitrogen and TDS objectives* for the new management zones, and new nitrogen and TDS management strategies applicable to both surface and ground waters. This Basin Plan Amendment was adopted by the Regional Board on January 22, 2004. The State Board and the Office of Administrative Law (OAL) approved the amendment on September 30, 2004 and December 23, 2004, respectively. The USEPA approved the surface water standard and related provisions of the amendment on June 20, 2007.
>
> 3. TDS and TIN limitations in Table 4-1 of the Basin Plan are specified in this Order for Permittees' discharges subject to the De Minimus Permit. Where Dry Season flows are identified as part of the IC/ID program element, *this Order also requires Permittees to establish their baseline discharge concentration for Dry Season conditions*.[598]

For the reasons explained below, the Commission finds that Appendix 3, Section III.E.3 newly requires the permittees to establish a baseline dry weather flow concentration for TDS [total dissolved solids] and TIN [total inorganic nitrogen] at each core monitoring location using existing dry weather monitoring data for nitrogen and total dissolved solids, but does not require the permittees to perform dry weather monitoring for nitrogen or total dissolved solids and even if it did, that activity is not new.

Federal law requires the permittees to identify and eliminate illicit discharges to the MS4s and to develop inspection procedures and methods for detecting and preventing illicit discharges.[599] Federal law also requires the permittees to document and include in the permit the "results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application."[600]

---

[597] Exhibit A, Test Claim, filed January 31, 2011, page 42 (Test Claim narrative); Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 10.

[598] Exhibit A, Test Claim, filed January 31, 2011, pages 163-164 (test claim permit, Sections II.L.2 and II.L.3).

[599] Code of Federal Regulations, title 40, sections 122.26(d)(1)(v), (d)(2)(iv)(B).

[600] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

> At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate.[601]

Thus, under federal law, the permittees are required to conduct a visual screening at each field screening point or major outfall during dry weather periods, to collect samples if any flow is observed, and to analyze those samples "to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants)."[602] The federal regulations also require the permittees to perform the field screening analysis using "analytical methods approved under 40 CFR part 136 [Guidelines Establishing Test Procedures for the Analysis of Pollutants] or to provide a description of the method used, "including the name of the manufacturer of the test method along with the range and accuracy of the test."[603]

The prior permit required the permittees to identify and eliminate IC/IDs to the MS4s, to implement and improve their monitoring programs, and to investigate IC/IDs indicated through dry weather monitoring or routine inspections.[604]

The prior permit's Monitoring and Reporting Program also required the permittees to revise the Consolidated Monitoring Program (CMP)[605] and to focus monitoring efforts on "areas with elevated pollutant concentrations" pending approval of the revised CMP.[606] The Monitoring and Reporting Program specified that the "Principal Permittee, in coordination with Regional Board staff, will identify these monitoring locations within six (6) months of adoption of the Order."[607] As the test claim permit's Fact Sheet explains:

---

[601] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

[602] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

[603] Code of Federal Regulations, title 40, section 122.26(d)(1)(iv)(D).

[604] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[605] Exhibit A, Test Claim, filed January 31, 2011, pages 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C).

[606] Exhibit A, Test Claim, filed January 31, 2011, page 423 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section I.G).

[607] Exhibit A, Test Claim, filed January 31, 2011, page 423 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section I.G).

> During the first term MS4 Permit and part of the second term MS4 Permit, the Permittees conducted monitoring of the Urban Runoff flows, Receiving Water quality, and sediment quality. The Santa Ana Phase I NPDES Monitoring Program began in November 1991 with 27 monitoring sites. The program has been reduced in phases to more specifically address Urban Runoff program needs and to redirect monitoring resources to TMDL-related activities. There was a time where samples were collected on a rotational basis with no consistent monitoring from year to year. *On April 14, 2003, with the submittal of an Interim Monitoring Program, monitoring at seven core sampling locations (Sampling Stations 040, 316, 318, 364, 702, 707, and 752) was established that provided representative and consistent monitoring results for the Permit Area*.[608]

Thus, beginning April 14, 2003, the prior permit established monitoring at seven core sampling locations throughout the permittees' jurisdictions.[609]

As part of the revisions to the CMP, the permittees were required to address a number of monitoring components, including the total number of samples to be collected from each monitoring station, the frequency of sampling during wet and dry weather, and the parameters selected for field screening.[610] The prior permit also required the revised CMP to include mass emissions monitoring to include dry weather samples for constituents that are known to have contributed to an impairment of receiving waters, as follows:

> Representative samples from the first storm event and two more storm events shall be collected during the rainy season. *A minimum of three dry-weather samples shall also be collected.* Samples from the first rain event each year shall be analyzed for the entire suite of priority pollutants. *All samples must be analyzed for* metals, pH, TSS, TOC, pesticides/herbicides, and *constituents that are known to have contributed to impairment of local receiving waters.* Dry weather samples should also include an analysis for oil and grease. Sediments associated with mass

---

[608] Exhibit A, Test Claim, filed January 31, 2011, page 345 (test claim permit, Appendix 6 [Fact Sheet], Section VIII.Q), emphasis added.

[609] The seven core monitoring locations are located at the following outfalls: Corona Storm Drain (040); Sunnymead Channel (316); Hemet Channel (318); Magnolia Center (364); University Wash Channel (702); North Norco Channel (707); and Perris Line J (752). Exhibit N (14), Excerpts from Riverside County Consolidated Program for Water Quality Monitoring, Whitewater River Region, Santa Ana Region, and Santa Margarita Region, October 31, 2008, pages 38-39.

[610] Exhibit A, Test Claim, filed January 31, 2011, pages 426-427 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.C).

> emissions should be analyzed for constituents of concern identified in the water analyses.[611]

The prior permit explains that several waterbodies were impaired and 303(d) listed for nutrients (which include nitrogen)[612] and total dissolved solids:

> The water quality assessment conducted by Regional Board staff has identified a number of beneficial use impairments due, in part, to agricultural and Urban Runoff. Section 303(b) of the CWA requires each of California's Regional Water Quality Control Boards to routinely monitor and assess the quality of waters of their respective regions. If this assessment indicates that beneficial uses are not met, then that waterbody must be listed under Section 303(d) of the CWA as an impaired waterbody ("Impaired Waterbody"). *The 1998 water quality assessment listed a number of water bodies within the Permit Area as impaired pursuant to Section 303(d). In the Permit Area, these include: Canyon Lake (for nutrients and pathogens); Lake Elsinore (for nutrients, organic enrichment/low D.O., unknown toxicity and sedimentation); Lake Fulmer (for pathogens); Santa Ana River, Reach 3 (for nutrients, pathogens, salinity, TDS, and chlorides); and Santa Ana River, Reach 4 (for pathogens).* However, the Regional Board now recognizes that Reach 3 of the Santa Ana River is meeting the standards for nutrients, salinity, TDS and chlorides and has requested that this Reach be de-listed for these constituents in the 2002 CWA 303(d) list.[613]

Therefore, the prior permit required the permittees to conduct dry weather monitoring for "constituents that are known to have contributed to impairment of local receiving waters" which included nitrogen and total dissolved solids, and which, effective April 14, 2003, was required to be performed at the seven core monitoring stations. Thus, dry weather monitoring for nitrogen and total dissolved solids is not new.

Appendix 3, Section III.E.3 now requires the permittees to use the existing dry weather monitoring data for nitrogen and total dissolved solids required to be collected under the prior permit at the core monitoring stations "to establish a baseline dry weather flow concentration for TDS [total dissolved solids] and TIN [total inorganic nitrogen] at each Core monitoring location."[614] While the term "baseline dry weather flow concentration"

---

[611] Exhibit A, Test Claim, filed January 31, 2011, page 425 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program], Section III.B.1.c), emphasis added.

[612] Exhibit N (9), Excerpt from U.S. Geological Survey, Concentrations of Dissolved Solids and Nutrients in Water Sources, Selected Streams of the Santa Ana Basin, California, October 1998–September 2001 (2004), page 2.

[613] Exhibit A, Test Claim, filed January 31, 2011, page 366 (Order No. R8-2002-0011, Finding 17), emphasis added.

[614] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E.3).

is not defined in the test claim permit, the Guidance Manual provides the following context:

> Not all dry weather storm drain flow contains pollutants or pathogens. Indeed, many communities find that storm drains with dry weather flow are, in fact, relatively clean. Flow in these drains may be derived from springs, groundwater seepage, or leaks from water distribution pipes. Consequently, field testing and/or water quality sampling are needed to confirm whether pollutants are actually present in dry weather flow, in order to classify them as an illicit discharge.[615]
>
> * * *
>
> EPA's National Urban Runoff Project (NURP) studies highlighted the significance of pollutants from illicit entries into urban storm sewerage (EPA, 1983). Such entries may be evidenced by flow from storm sewer outfalls following substantial dry periods. Such flow, frequently referred to as "baseflow" or "dry weather flow", could be the result of direct "illicit connections" as mentioned in the NURP final report (EPA, 1983), or could result from indirect connections (such as leaky sanitary sewer contributions through infiltration). Many of these dry weather flows are continuous and would therefore occur during rain induced runoff periods. Pollutant contributions from dry weather flows in some storm drains have been shown to be high enough to significantly degrade water quality because of their substantial contributions to the annual mass pollutant loadings to receiving waters (project research).[616]

Thus, "baseline dry weather flow" as used in Appendix 3, Section III.E.3 refers to the "flow from storm sewer outfalls following substantial dry periods," meaning that Appendix 3, Section III.E.3 requires the permittees to use their existing monitoring data for nitrogen and total dissolved solids to establish a baseline concentration of those constituents during dry weather conditions so that the permittees can more accurately track and investigate potential IC/IDs.

While prior law required the permittees to collect dry weather monitoring data for nitrogen and total dissolved solids at the core monitoring stations, neither federal law nor the prior permit specifically required the use of that existing dry weather monitoring data to establish baseline dry weather flow concentrations for those constituents.

---

[615] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 5.

[616] Exhibit N (11), Excerpts from Center for Watershed Protection and Robert Pitt, University of Alabama, Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, October 2004, updated 2005, page 7.

Accordingly, Appendix 3, Section III.E.3 imposes the following new, one-time requirements on the permittees:

- Review and update the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination developed by the Center for Watershed Protection or an equivalent program.[617]
- Establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring station using dry weather monitoring data for nitrogen and total dissolved solids.[618]

c. The new requirements imposed by Sections IX.D, IX.H, and Appendix 3, Section III.E.3 are mandated by the state and impose a new program or higher level of service.

As stated above, the following activities in Sections IX.D, IX.H, and Appendix 3, Section III.E.3 are new:

- Within 18 months of adoption of the test claim permit, review and revise the IC/ID program to include a proactive illicit discharge detection and elimination program, using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program, consistent with Section IX.E of the test claim permit.[619]
- Report the result of the review required by Section XI.D of the test claim permit in the annual report and include a description of the permittees' revised proactive illicit discharge detection and elimination program, procedures, and schedules.[620]
- *Except* for responses resulting in enforcement actions, maintain and update on an ongoing basis a database summarizing IC/ID incident response (including IC/IDs detected as part of field monitoring activities).[621]
- Review and update the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge

[617] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[618] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[619] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[620] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[621] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

Detection and Elimination developed by the Center for Watershed Protection or any other equivalent program.[622]

- Establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring station using dry weather monitoring data for nitrogen and total dissolved solids.[623] *Monitoring for total dissolved solids and total inorganic nitrogen is not a new requirement*.

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[624]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[625] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[626]

Here, the Regional Board asserts that because the federal regulations require the permittees to develop stormwater management programs to reduce the discharge of pollutants to the MEP, the "enhanced IDDE requirements are necessary to meet the minimum federal MEP standard."[627] Yet, federal law gives the Regional Board discretion to determine what controls and inspections are necessary to meet the MEP

---

[622] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[623] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[624] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[625] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[626] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[627] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 28.

standard, and does not require any specific activities.[628] Furthermore, neither the CWA's MEP standard nor federal regulations expressly require the new IDDE program activities.

Federal law requires that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers"[629] and a management program that that imposes controls to reduce pollutants in discharges to the MEP.[630] Federal law also requires management programs to include a program to identify illicit connections to the MS4, and "a program, including a schedule, to detect and remove…illicit discharges and improper disposal into the storm sewer."[631] The illicit discharges programs are required to address implementation and enforcement of ordinances to prevent illicit discharges to the MS4; procedures to conduct on-going field screening activities during the life of the permit, and to identify locations that will be evaluated by such field screens; procedures to investigate portions of the separate storm sewer system that indicate potential illicit discharges or other sources of non-storm water, including identifying the location of storm sewers to be evaluated, and which may include sampling for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting storm sewer inspections; procedures to prevent, contain, and respond to spills that may discharge into the MS4; a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from MS4s; educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and controls to limit infiltration of seepage from municipal sanitary sewers to MS4s where necessary.[632] Federal regulations also require the permittees to identify the location of known MS4 outfalls on a topographic map.[633]

Federal law requires monitoring for compliance with the effluent limitations identified in an NPDES permit, and reporting of monitoring results at least once per year, or within 24 hours for any noncompliance which may endanger health or the environment.[634] Federal regulations also require the permittees to assess their controls to estimate "reductions in loadings of pollutants from discharges of municipal storm sewer

---

[628] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 767-768, citing to Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[629] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4).

[630] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[631] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B).

[632] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B).

[633] Code of Federal Regulations, title 40, section 122.26(d)(1)(iii)(B).

[634] Code of Federal Regulations, title 40, sections 122.41 (conditions applicable to all permits, including monitoring and reporting requirements); 122.44(i) (monitoring requirements to ensure compliance with permit limitations); 122.48 (requirements for recording and reporting monitoring results); and Part 127 (electronic reporting).

constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program"[635] and to annually report on the "status of implementing the components of the storm water management program that are established as permit conditions," "[p]roposed changes to the storm water management programs that are established as permit conditions," any "[r]evisions, if necessary, to the assessment of controls," a "summary of data, including monitoring data, that is accumulated throughout the reporting year; and a "summary describing the number and nature of enforcement actions, inspections, and public education programs."[636]

Despite these extensive federal law requirements to effectively prohibit, detect, and remove illicit discharges, there is no requirement under federal law imposing the specific activities at issue: to perform a one-time review and revision of the IDDE program element of the IC/ID program, including the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs, to ensure consistency with the principles set forth in the Guidance Manual, and to report those findings; to establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring; or to maintain an IC/ID incident response database.[637] Furthermore, there is no evidence in the record showing that the new proactive IDDE program requirements are the only means by which the federal MEP standard can be met. Instead, the Regional Board exercised a true choice by determining that the proactive IDDE program requirements are necessary to meet the MEP standard. Therefore, these activities are mandated by the state.

Additionally, the Commission finds that these state-mandated activities impose a new program or higher level of service. "New program or higher level of service" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[638] Only one of these alternatives is required to establish a new program or higher level of service.[639]

Here, the newly mandated IDDE program requirements are uniquely imposed on local government and are intended to enhance the IC/ID program by making it *more* proactive, rather than "carried out passively" through complaint and inspection

---

[635] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

[636] Code of Federal Regulations, title 40, section 122.42(c).

[637] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Sections IX.D, IX.E, IX.H), 253 (test claim permit, Appendix 3, Section III.E.3).

[638] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

[639] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

response.[640] Therefore, the requirements are uniquely imposed on the local government permittees and provide a governmental service to the public.

Accordingly, Sections IX.D, IX.H, and Appendix 3, Section III.E.3 of the test claim permit impose a state-mandated new program or higher level of service on the claimants to perform the activities listed above.

4. The Requirement in Section X.D. of the Test Claim Permit, for the County of Riverside to Maintain a Database of Septic Systems Approved in the Permittees' Jurisdictions Since 2008, Imposes a State-Mandated New Program or Higher Level of Service.

The claimants allege Section X.D. of the test claim permit imposes a reimbursable state mandate on the County of Riverside to maintain updates to an inventory database of all new septic systems in the permittees' jurisdictions approved since 2008.[641]

The Commission finds that Section X.D. imposes a state-mandated new program or higher level of service on the County of Riverside to maintain a database of septic systems approved in the permittees' jurisdictions since 2008.

a. Background

i. Federal law requires the permittees to effectively prohibit non-stormwater discharges from entering the MS4s and to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4s, including effluent from septic tanks.

In order to achieve water quality standards, federal law requires that permits for discharges from MS4s "shall include a requirement to *effectively prohibit* non-stormwater discharges into the storm sewers," unless those discharges are conditionally exempted from this prohibition.[642] A discharge to a MS4 that "is *not* composed entirely of stormwater" is considered an illicit non-stormwater discharge.[643] Illicit non-stormwater discharges include effluent from septic tanks.[644]

---

[640] Exhibit A, Test Claim, filed January 31, 2011, page 160 (test claim permit, Section II.I.3).

[641] Exhibit A, Test Claim, filed January 31, 2011, pages 43-44 (Test Claim narrative).

[642] United States Code, title 33, section 1342(p)(3)(B)(ii) (Public Law 100-4); Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(1), emphasis added.

[643] Code of Federal Regulations, title 40, section 122.26(b)(2) defines "illicit discharge" as "any discharge to a municipal separate storm sewer that is *not* composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities."

[644] Exhibit N (33), U.S. EPA, Stormwater Phase II Final Rule, Illicit Discharge Detection and Elimination Minimum Control Measure, Fact Sheet 2.5 (EPA 833-F-00-007), January 2000, revised December 2005.

To "effectively prohibit" non-stormwater discharges requires the implementation of a program to detect and remove illicit discharges, which under federal law must contain "a description of procedures to prevent, contain, and respond to spills that may discharge into the MS4."[645]

ii. The prior permit required the permittees to prohibit illicit non-stormwater discharges from entering the MS4s, to respond to spills that may impact receiving water quality, and to develop procedures to control septic system failures.

Under the prior permit, the permittees were required to prohibit illicit non-stormwater discharges from entering their respective MS4s through their legal authority, as well as by implementing and improving their inspection, monitoring, and reporting programs.[646] Furthermore, upon notice, the permittees were required to investigate all spills, leaks, and illegal discharges to the MS4s.[647]

The prior permit also required the District as the principal permittee to work with local sewering agencies to develop a unified response procedure to respond to sewage spills that may impact receiving water quality and "to work cooperatively with the local sewering agencies to determine and control the impact of infiltration from leaking sanitary sewer systems on Urban Runoff quality."[648] Permittees with 50 or more septic tank sub-surface disposal systems in their jurisdictions were also required to "identify with the appropriate governing agency a *procedure to control septic system failures* to prevent impacts on urban runoff quality and continue to follow procedures established by the State Health Department to address such failures."[649] The permittees applied the unified sewage spill response procedure (SSO)[650] to sewage spills not only from sanitary sewer systems but also from private laterals and *failing septic systems*.[651]

---

[645] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(4).

[646] Exhibit A, Test Claim, filed January 31, 2011, page 384 (Order No. R8-2002-0011, Section VI.A).

[647] Exhibit A, Test Claim, filed January 31, 2011, pages 384-385 (Order No. R8-2002-0011, Section VI.B).

[648] Exhibit A, Test Claim, filed January 31, 2011, page 385 (Order No. R8-2002-0011, Section VII.A).

[649] Exhibit A, Test Claim, filed January 31, 2011, page 386 (Order No. R8-2002-0011, Section VII.B).

[650] The unified sewage spill response procedure is referred to in the 2006 Drainage Area Management Plan as the Sanitary Sewer Overflow (SSO) Procedure. Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 2, 21. The SSO Procedure was attached to the 2006 DAMP at Appendix I but is not contained in the administrative record.

[651] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 21-22, emphasis added.

The Fact Sheet for the prior permit explains the rationale for these requirements as follows:

> In recent years, sewage spills/leaks into MS4s that discharge into Waters of the U.S. have become one of the leading causes of beneficial use impairment. To address these concerns, a set of separate waste discharge requirements for local sanitary sewer agencies is being prepared by the Regional Board. *Failing septic systems and improper use of portable toilets have also been linked to microbial contamination of urban runoff*. *The Permittees shall identify, with the appropriate local agency, a mechanism to prevent failure of these septic systems from causing or contributing to pollution of Receiving Waters*. The Permittees shall also review their local oversight program for the placement and maintenance of portable toilets to determine the need for any revision.[652]

b. Section X.D of the test claim permit imposes a state-mandated new program or higher level of service.

i. Section X.D imposes a new requirement on the County of Riverside to maintain an inventory database of septic systems in the permittees' jurisdictions approved since 2008.

Section X.D. of the test claim permit requires those permittees with septic systems in their jurisdiction to maintain an inventory of septic systems completed in 2008, and requires the County of Riverside, through its Department of Environmental Health, to create and maintain a database of new septic systems approved since 2008.[653]

> Permittees with septic systems in their jurisdiction shall maintain the inventory of septic systems within its jurisdiction completed in 2008. Updates to the inventory will be maintained by County Environmental Health via a database of new septic systems approved since 2008.[654]

The claimants did not plead the first provision in Section X.D, above, which requires permittees with septic systems in their jurisdiction to maintain a jurisdiction-wide inventory of septic systems completed in 2008. Instead, claimed costs are limited to

---

"The Permittees currently implement the 2006 DAMP. With the adoption of this Order, the Permittees are required to implement the 2007 DAMP. The DAMP… is incorporated by reference as an enforceable element of this Order." Exhibit A, Test Claim, filed January 31, 2011, page 133 (test claim permit, Section II.A..5).

[652] Exhibit A, Test Claim, filed January 31, 2011, page 467 (Order No. R8-2002-0011, Appendix 6 [Fact Sheet]), emphasis added.

[653] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

[654] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

those incurred by the County of Riverside to develop, implement, and update a database inventory of all new septic systems approved *since* 2008.[655]

The test claim permit Fact Sheet explains that while the permittees "have already developed a program to address various types of spills to the MS4s," the test claim permit "requires the Permittees to implement control measures and procedures to prevent, respond to, contain and clean up all sewage and other spills from sources such as portable toilets and septic systems."[656] Furthermore, audits of the MS4 program found that the majority of permittees with septic systems in their jurisdictions "*have inadequate information with regard to the number and location of those systems within their jurisdiction*" and demonstrated the need for "a program to ensure that failure rates are minimized."[657]

The County of Riverside is newly required by Section X.D to maintain a database of septic systems in the permittees' jurisdictions approved since 2008. While federal law requires the permittees to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4, it does not specify what procedures must be used.[658] Furthermore, no similar requirement existed under the prior permit. The prior permit required the District to collaborate with local sewering agencies to develop a unified response procedure to respond to sewage spills, including spills from septic tanks, and required permittees with 50 or more septic systems in their jurisdiction to identify a procedure to control septic system failures and to address such failures.[659] The 2006 Drainage Area Management Plan reflects that the permittees complied with these requirements by including notification of septic system failures as part of the unified response procedure, but does not provide further detail or identify any other procedures to control septic system failures.[660]

The Regional Board contends that the prior permit requirement that permittees with 50 or more operating septic systems within their jurisdiction identify a procedure for controlling septic system failures, "would logically necessitate establishing a list of septic

---

[655] Exhibit A, Test Claim, filed January 31, 2011, pages 43, 75. See also Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 18 (framing the mandated activities under Section X.D as limited to those performed by the County of Riverside).

[656] Exhibit A, Test Claim, filed January 31, 2011, page 338 (test claim permit, Appendix 6 [Fact Sheet]).

[657] Exhibit A, Test Claim, filed January 31, 2011, page 339 (test claim permit, Appendix 6 [Fact Sheet]), emphasis added.

[658] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(4).

[659] Exhibit A, Test Claim, filed January 31, 2011, pages 385-386 (Order No. R8-2002-0011, Sections VII.A and VII.B).

[660] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 21-22.

systems," which it asserts is not significantly different from creating a database .[661] In carrying out its duties under the prior permit and under preexisting state and local laws governing septic system cleaning, operation and permitting, the County likely possessed the data that Section X.D. of the test claim permit now requires. County Ordinance No. 712 specifies that septic waste haulers must report to the County on a monthly basis the number and location of all septic systems serviced.[662] Furthermore, under County Ordinance No. 650, because septic system construction and operation in the unincorporated parts of the County and in cities that contract with the County requires approval and issuance of a permit by the County, the County receives as part of the application process the applicant's contact information and the location of the proposed septic system installation or reconstruction.[663] The County also receives information regarding the location of septic systems when carrying out its duty to investigate septic system failures.[664]

Nonetheless, while carrying out these overlapping duties may have resulted in the County being in possession of the information necessary to create and maintain a post-2008 septic system database, they fall short of imposing a requirement on the County to compile and update that information in a database.

Similarly, while the statewide onsite wastewater treatment systems (OWTS) policy provides that local agencies are required to annually report to the Regional Board the number, location, and a description of all permits issued for new and replacement OWTS (i.e., septic systems), that policy was adopted in 2013, *after* the test claim permit, and imposes requirements on the Regional Boards, not local government agencies, by requiring the Regional Boards to implement the OWTS policy through amendments to their Basin Plans.[665]

As to the Regional Board's position that the County "should already have compiled, or have access to, a list of septic systems installed" within the permittees' jurisdictions,

---

[661] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 31.

[662] Exhibit N (28), Riverside County Ordinance No. 712, page 6.

[663] Exhibit N (27), Riverside County Ordinance No. 650, page 4; see also Health and Safety Code section 117435, which authorizes local health officers to require registered septic waste haulers to report the owner's contact information and the location of each septic tank cleaned out and the date of the cleaning.

[664] Exhibit N (27), Riverside County Ordinance No. 650, pages 6-8; Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 22.

[665] Exhibit N (7), Excerpt from State Water Resources Control Board, Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy), adopted June 19, 2012, https://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf (accessed on December 5, 2022), page 2.

there is no supporting evidence in the record. Furthermore, under Government Code section 17565, "[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate." Thus, even if the County, in performing its duties under preexisting law, possessed the same information needed to establish a septic system database, that fact does amount to a *requirement* to create and maintain such a database, nor does it preclude the requirement in Section X.D. from imposing a state-mandated program.

Therefore, Section X.D imposes a new requirement on the County to maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008.

ii. The new requirement imposed by Section X.D is mandated by the state and imposes a new program or higher level of service.

The Commission finds that the new requirement in Section X.D, for the County of Riverside to maintain a database of new septic systems in the permittees' jurisdictions approved since 2008, is mandated by the state and imposes a new program or higher level of service.

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[666]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[667] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[668]

Here, the Regional Board argues that the septic system database requirement in Section X.D is necessary to meet the federal "maximum extent practicable" (MEP) standard because federal law prohibits illicit discharges and therefore "maintain[ing] an

---

[666] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[667] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[668] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

inventory of septic systems is part of a practical approach to reducing pollutant loads from septic systems."[669] However, there is no evidence in the record that maintaining a countywide septic system database is the only means by which the federal MEP standard can be met.

Furthermore, federal law gives the Regional Board discretion to determine what controls and inspections are necessary to meet the MEP standard and does not require any specific activities.[670] The federal regulations require the permittees to effectively prohibit non-stormwater discharges from entering the MS4s and to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4, including effluent from septic tanks.[671] Applying the Court's reasoning in *Department of Finance v. Commission on State Mandates*, even though the federal regulations contemplate procedures to prevent, contain, and respond to spills that may discharge into the MS4, that does not equate to a federal requirement to create and maintain a multijurisdictional septic system database.[672] Instead, the Regional Board is exercising a true choice and determining what specific controls are necessary to prevent, contain, and respond to spills that may discharge into the MS4, including effluent from septic tanks.

Accordingly, the Commission finds the new activity required by Section X.D is mandated by the state.

Additionally, the Commission finds that the new requirement imposed by Section X.D constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[673] The state-mandated activity of creating a septic system database is expressly directed toward the local agency permittees under their authority to regulate septic systems and, thus, is unique to government. The requirement is intended to equip the County Department of Environmental Health, the permittees, and the Regional Board with greater information regarding the number and location of septic systems, which ensures that septic system failure rates are minimized and reduces the discharge of pollutants to the MS4.[674] "The challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions"

---

[669] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 30-31.

[670] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 767-768, citing to Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[671] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(1), (B)(4).

[672] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 771; Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

[673] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

[674] Exhibit A, Test Claim, filed January 31, 2011, page 339 (test claim permit, Appendix 6 [Fact Sheet]).

designed to reduce the discharge of pollutants into the MS4 to the MEP.[675] Therefore, the new requirement also carries out the governmental function of providing services to the public.

Accordingly, Section X.D of the test claim permit imposes a state-mandated new program or higher level of service as follows:

- The County of Riverside shall maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008.[676]

5. The Requirements in Sections XI.D.1 and XI.D.7 of the Test Claim Permit, to Identify Facilities that Transport, Store, or Transfer Pre-Production Plastic Pellets and Managed Turf Facilities and Determine if Additional Inspection Is Warranted, and to Develop a Mobile Business Enforcement Strategy, Respectively, Impose a State-Mandated New Program or Higher Level of Service. However, the Remaining Requirements in Section XI.D.6 and XI.E.6, Pertaining to Municipal Inspections of Mobile Businesses and Residential Facilities, Are Not New and Do Not Impose a New Program or Higher Level of Service.

The claimants have pled Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 of the test claim permit, pertaining to municipal inspections of commercial and residential facilities. The claimants allege that these provisions add additional facilities to the inspection and enforcement responsibilities of the permittees and impose administrative obligations which cannot be recovered through inspection fees.[677] Specifically, the claimants allege as follows:

1) Section XI.D.1 requires the claimants to identify and inspect commercial facilities that handle, transport, or transfer pre-production plastic pellets and managed turf facilities, the latter of which may include golf courses, athletic fields, cemeteries and private parks;
2) Section XI.D.6 requires the claimants to identify mobile businesses within their jurisdiction, notify these businesses concerning the minimum source control and pollution prevention BMPS that they must develop and implement, and develop source control and pollution prevent BMPs applicable to mobile businesses;
3) Section XI.D.7 requires the claimants to develop an enforcement strategy to address mobile businesses; and
4) Section XI.E.6 requires the claimants to conduct an evaluation of their residential programs in the annual reports.[678]

---

[675] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 560; United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[676] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

[677] Exhibit A, Test Claim, filed January 31, 2011, page 44.

[678] Exhibit A, Test Claim, filed January 31, 2011, pages 44-46.

By their plain language, the pled portions of Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 impose requirements on the "co-permittees" only.[679] Nonetheless, the claimants allege that Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 apply to all of the claimants, including the principal permittee (District).[680] The District's supporting declaration states that "certain" of the requirements imposed by these sections were funded by the District, but does not provide further explanation.[681]

The test claim permit designates the District as "principal permittee," the County and cities as "co-permittees," and states that the "County and incorporated cities are hereinafter the 'Co-Permittees', and collectively with the Principal Permittee referred to as the 'Permittees'."[682] Thus, where the test claim permit refers to the "co-permittees," that category excludes the principal permittee (District).

The inspection activities at issue are contained in Section XI, which is entitled *Co-Permittee* Inspection Programs and distinguishes between the inspection requirements imposed on the co-permittees and the permittees collectively.[683] For example, Section XI requires the *co-permittees* only to maintain a database of active construction sites and industrial and commercial facilities within their jurisdiction;[684] to enforce their storm water ordinances and permits at all construction sites and industrial, and commercial facilities;[685] to conduct construction site inspections for compliance with their respective ordinances;[686] and to conduct industrial facilities inspections for compliance with their respective ordinances, permits, and the test claim permit.[687] Thus, Section XI requires

---

[679] Exhibit A, Test Claim, filed January 31, 2011, pages 205 (test claim permit, Section XI.D.1 ["the Co-Permittees shall…"]), 206 (test claim permit, Section XI.D.6 ["the Co-Permittee shall…"], Section XI.D.7 ["the Co-Permittees shall…"]), 207 (test claim permit, Section XI.E.6 ["each Co-Permittee shall…"]).

[680] Exhibit A, Test Claim, filed January 31, 2011, pages 45-46.

[681] Exhibit A, Test Claim, filed January 31, 2011, page 67 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division for the Riverside County Flood Control and Water Conservation District, paragraph 5(e) [stating that "certain of these requirements were funded by the Permittees, including the District"]).

[682] Exhibit A, Test Claim, filed January 31, 2011, pages 125, 132 (test claim permit).

[683] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit).

[684] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section XI.A.1).

[685] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section XI.A.10).

[686] Exhibit A, Test Claim, filed January 31, 2011, page 203 (test claim permit, Section XI.B.3).

[687] Exhibit A, Test Claim, filed January 31, 2011, pages 204 (test claim permit, Section XI.C.2).

the *co-permittees* only to conduct industrial, commercial, and construction site inspections.

Furthermore, the District's enabling act does not provide the District with land use or police powers to control industrial, commercial, or development.[688] Therefore, the District cannot regulate private businesses or residents, or industrial or commercial facilities, and does not perform inspections.[689] While Section II.A.2, lists inspections amongst the responsibilities of the principal permittee, it explains that those inspection duties are limited to "the MS4 facilities over which it has jurisdiction."[690]

Therefore, the pled requirements in Sections XI.D.1, XI.D.6, XI.D.7, and XI.E.6 pertain to the "co-permittees" only, not the permittees collectively, and thus do not apply to the District.

For the reasons explained below, the Commission finds that the requirements in Sections XI.D.1 and XI.D.7 of the test claim permit, to identify facilities that transport, store, or transfer pre-production plastic pellets[691] and managed turf facilities and determine if these facilities warrant additional inspection to protect water quality, and to develop a mobile business enforcement strategy, respectively, impose a state-mandated new program or higher level of service. The remaining requirements in Sections XI.D.6 and XI.E.6, pertaining to commercial and residential facilities inspections, are not new and do not impose a new program or higher level of service.

a. Background

i. Federal law requires a stormwater management program that addresses discharges from commercial and residential areas, including prohibiting non-stormwater discharges and educational activities to prevent illicit discharges to the MS4.

Under federal law, NPDES permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as

---

[688] Exhibit N (18), Excerpts from Riverside County Flood Control and Water Conservation District's Local Implementation Plan, June 30, 2020, page 3.

[689] Exhibit N (18), Excerpts from Riverside County Flood Control and Water Conservation District's Local Implementation Plan, June 30, 2020, page 4 ("the District does not have ordinances to regulate private development activities, private construction or grading activities, or private businesses or residents"). The test claim also acknowledges that the District "is not a general purpose government" and therefore "some portions of the NPDES MS4 Program may not be applicable to it." Exhibit A, Test Claim, filed January 31, 2011, page 35, footnote 5 (Test Claim narrative).

[690] Exhibit A, Test Claim, filed January 31, 2011, page 175 (test claim permit, Section II.A.2.c).

[691] Pre-production plastic pellets are also referred to in the test claim permit as nurdles and plastic resin pellets. See Exhibit A, Test Claim, filed January 31, 2011, page 286 (test claim permit, Appendix 4 [Glossary]).

the Administrator or the State determines appropriate for the control of such pollutants."[692] Federal regulations define "best management practices" as:

> . . . schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.[693]

Federal regulations implementing the CWA require that all applicants for a MS4 permit have a management program that includes stormwater discharges from commercial and residential areas as follows:

- The program shall include "structural and source control measures to reduce pollutants from runoff from *commercial and residential areas*…," and the claimants acknowledge this federal law.[694] This shall include "A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities . . . ."[695]
- "A description of a program, including inspections, to implement and enforce an ordinance…[which] shall address all types of illicit discharges; however the following category of non-storm water discharges or flows shall be addressed *where such discharges are identified by the municipality as sources of pollutants*… *landscape irrigation…lawn watering*, *individual residential car washing*…"[696]
- "A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials."[697]
- Permittees are required by federal law to have adequate legal authority established by ordinance that prohibits illicit discharges to the MS4, and

[692] United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[693] Code of Federal Regulations, title 40, section 122.2.

[694] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A); Exhibit A, Test Claim filed January 31, 2017, page 45.

[695] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(6), emphasis added.

[696] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B), emphasis added.

[697] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(6).

controls the discharge of spills, dumping, or disposal of materials other than stormwater to the MS4.[698]

The federal regulations also require the permittees to assess the controls to estimate "reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program."[699] Additionally, federal law requires each permittee to submit an annual report to the Regional Board, which includes, amongst other things, "[t]he status of implementing the components of the storm water management program that are established as permit conditions," "[p]roposed changes to the storm water management programs," and any "[r]evisions, if necessary, to the assessment of controls."[700]

ii. The prior permit required the claimants to inventory and prioritize commercial facilities for inspection based upon their potential to impact water quality, to specify inspection frequencies, and to inspect inventoried commercial facilities at least once during the permit term.

Under the prior permit, the "Enforcement/Complaint Strategy" (E/CS) outlined the municipal inspection program, which included inspections of commercial facilities.[701] The E/CS "provides criteria for characterizing the significance of violations, criteria for prioritizing violations, appropriate response actions corresponding to the priority of violations and identifies the hierarchy of enforcement/compliance responses."[702] The E/CS was integrated into the Drainage Area Management Plan (DAMP), and "comprises a framework to standardize the implementation and enforcement by the co-permittees of their respective Storm Water Ordinances."[703] The prior permit required the permittees to implement the DAMP and its components, including the E/CS.[704]

As part of the E/CS, the Riverside County Flood Control and Water Conservation District and the County of Riverside implemented the Compliance Assistance Program

---

[698] Code of Federal Regulations, title 40, section 122.26(d)(2)(i).

[699] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

[700] Code of Federal Regulations, title 40, section 122.42(c).

[701] Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011, Section IX).

[702] Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011, Section IX).

[703] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 10; Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011, Section IX).

[704] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

(CAP) for oversight and inspection of both industrial and commercial facilities.[705] Under the CAP, the County Environmental Health Department added a stormwater compliance survey to their regular countywide inspection process for all sites handling hazardous waste and all food services restaurants.[706] The 2006 DAMP explains the evolution of commercial facilities inspections under the prior permit as follows:

> This program element was revised to address the requirements of the Third-term MS4 Permits, including an expansion of the commercial businesses not covered by the CAP and Municipal Wastewater Pre-Treatment inspection programs.[707] The expansion has required some Permittees to hire inspectors to address those facilities not currently covered by the CAP or the Municipal Wastewater Pre-Treatment Program. In addition, the Third-Term MS4 Permits required inventories/databases of facilities, prioritization of industrial and commercial sources relative to the potential to impact water quality, and specified inspection frequencies based upon facility priority. The revised industrial and commercial sources program continues to have both regional and local jurisdiction components. However, the Permittees will review the effectiveness of these programs annually and make additional program modifications as necessary.

Section IX.C.1 of the prior permit required the permittees to revise the E/CS by developing and maintaining an inventory database of commercial facilities within their jurisdiction, the content of which varied depending on whether the permittees had

---

[705] Exhibit A, Test Claim, filed January 31, 2011, pages 369-370 (Order No. R8-2002-0011, Finding 31).

[706] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 35.

[707] According to the 2006 DAMP, "The Cities of Corona and Riverside also implemented a separate stormwater inspection program as part of their Municipal Wastewater Pre-Treatment inspection program." Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 35.

> The Cities of Corona and Riverside, which operate publicly owned treatment works (POTWs), in combination conduct annually on average, approximately 4,400 wastewater pre-treatment inspections on a variety of industrial and commercial establishments, including, but not limited to, retail food establishments, car washes, and carpet, drape & furniture cleaning establishments. When conditions are observed during these wastewater pre-treatment inspections that appear to be a violation of either the General Permit- Industrial or other permit issued by the Regional Board (for example, an individual NPDES permit or Waste Discharge Requirements), the Cities of Corona and Riverside notify Santa Ana Regional Board staff.

existing commercial inspection programs in place.[708] The three permittees with an existing commercial facilities inspection program[709] were required to develop an inventory of commercial facilities surveyed or inspected under their existing programs and to routinely update the inventory based on information from specified sources.[710] The permittees without commercial facility inspection programs were required to include in their inventory information from the Compliance Assistance Program (CAP), "automobile mechanical repair, maintenance, fueling, or cleaning; automobile and other vehicle body repair or painting; painting and coating; pool, lake and fountain cleaning (base of operations)," relevant to their jurisdiction.[711]

Section IX.C.2 of the prior permit separately required that each permittee develop an inventory of commercial facilities or businesses within its jurisdiction that included the following:

- *Mobile* automobile or other vehicle washing (base of operations);
- *Mobile* carpet, drape or furniture cleaning (base of operations);
- *Mobile* high pressure or steam cleaning (base of operations);
- Nurseries and greenhouses;
- Landscape and hardscape installation (base of operations); and,
- Other commercial sites/sources that the Permittee determines may contribute a significant pollutant load to the MS4.[712]

Furthermore, Section IX.C.4 of the prior permit required the permittees to prioritize commercial facilities within their jurisdiction as high, medium, or low threat to water quality, based on factors such as "type of commercial activities (SIC [Standard Industrial Classification] codes[713]), materials or wastes used or stored outside, pollutant discharge

---

[708] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011, Section IX.C.1).

[709] The three permittees with an existing commercial facilities inspection program are the cities of Corona and Riverside (through their Municipal Wastewater Pre-Treatment inspection programs) and Riverside County (through the Compliance Assistance Program).

[710] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011, Section IX.C.1).

[711] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011, Section IX.C.1).

[712] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011, Section IX.C.2), emphasis added.

[713] "SIC code" or "Standard Industrial Classification code" refers to the four-digit industry code, as defined by the US Department of Labor, Occupational Safety and Health Administration, and is used to identify if a facility requires coverage under the General

potential, facility size, proximity and sensitivity of Receiving Waters, frequency of existing inspections, based upon other California statutes or regulations, or local regulations, ordinances, or codes, and any other relevant factors" and to classify as high priority "facilities with a high potential for or history of unauthorized, non-storm water discharges."[714]

Upon completion of the inventory and threat prioritization required by Section IX.C.4, Section IX.C.5 of the prior permit required the permittees to establish an inspection frequency for the inventoried commercial facilities, pursuant to existing inspection programs, with the following caveats:

> Unless inspected more frequently pursuant to the existing programs, those commercial facilities given a high priority are to be inspected at least once a year, those commercial facilities given a medium priority are to be inspected at least once biannually, and those commercial facilities given a low priority are to be inspected at least once during the term of this Order. In the event that the commercial facility is found to be in violation of the Co-Permittee's Storm Water Ordinances the frequency of inspection shall be increased consistent with a compliance schedule determined appropriate by the Co-Permittee and as outlined in the revised E/CS to cause said facility to be brought into compliance.[715]

Therefore, under the prior permit, the permittees were required to inventory commercial facilities, prioritize inventoried commercial facilities for inspection based upon their potential to impact water quality, and specify inspection frequencies. At a minimum, the prior permit required the permittees to inspect the inventoried commercial facilities at least once during the duration of the permit.

iii. The prior permit required the permittees to enforce local stormwater ordinances at commercial facilities, address implementation and maintenance of appropriate or minimum BMPs by business owners and operators, and provide information to encourage compliance with local stormwater ordinances.

Under Sections IX.C.8 and IX.C.9 of the prior permit, the permittees were required to enforce their stormwater ordinances at commercial facilities and to document inspections performed and any actions taken:

> 8. Each Co-Permittee shall enforce its Storm Water Ordinance prohibiting nonexempt non-storm water discharges at commercial facilities. Sanctions for noncompliance may include: verbal and/or written warnings, notice of

---

Industrial Activities Storm Water Permit. Exhibit A, Test Claim, filed January 31, 2011, page 289 (test claim permit, Appendix 4 [Glossary]).

[714] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011, Section IX.C.4).

[715] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011, Section IX.C.5).

violation or non-compliance, obtaining an administrative compliance, stop work, or cease and desist order, a civil citation or injunction, the imposition of monetary penalties or criminal prosecution (infraction or misdemeanor).

9. The number of compliance surveys/inspections and the actions taken shall be documented by the Co-Permittees and an appropriate summary of said actions will be provided to the Principal Permittee for inclusion in the Annual Report submitted to the Regional Board.[716]

Section IX.C.6 of the prior permit required commercial inspections to, "at a minimum, address the following, consistent with the E/CS:"

- Commercial activity type(s) and SIC code(s);
- *Compliance with each Co-Permittee's Storm Water Ordinances*; If applicable, check for submittal of a NOI to comply with the General Industrial Activities Storm Water Permit or other permit issued by the State or Regional Board; and,
- *The E/CS*.[717]

The process for conducting commercial facilities inspections is explained in further detail in the DAMP, which states that at a minimum, the following issues are addressed during a commercial facility inspection:

- Verification of the type (or types) of industrial and/or commercial activities and facility SIC codes.
- Submittal of a NOI to comply with the General Permit-Industrial, if applicable based upon the facility's SIC code.
- *Compliance with the local jurisdiction's storm water ordinance*.
- Observation for non-storm water discharges, potential illicit connections, and illegal discharges to the MS4.
- Potential discharge of pollutants in Urban Runoff from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.
- *Implementation and maintenance of appropriate or minimum BMPs*.
- *Qualitative assessment of the effectiveness of the BMPs implemented*.
- *Education regarding stormwater pollution prevention*.[718]

---

[716] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Sections IX.C.8, IX.C.9).

[717] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011, Section IX.C.6).

Additionally, Section IX.C.7 of the prior permit required the permittees to expand their public education programs to provide owners and operators of commercial facilities with information to encourage general compliance with the permittees' stormwater ordinances and ensure coverage under applicable permits.[719]

> The Permittees will expand its existing public educational program to include a concentrated, business-specific element. This expanded education element will be described in detail in the WQMP and the DAMP. This education program will include *criteria to provide the commercial facility owner and/or operator with information to encourage compliance* with the Co-Permittees' Storm Water Ordinances and the General Industrial Activities Storm Water Permit or other permit issued by the State or Regional Board, if applicable. If the commercial facility is found to need coverage under the General Industrial Activities Storm Water Permit or other permit issued by the State or Regional Board, information will be provided and the Regional Board will be notified.[720]

Thus, under the prior permit, the permittees enforced local stormwater ordinances at commercial facilities; addressed with owners and operators how to implement and maintain appropriate or minimum BMPs; assessed the effectiveness of the BMPs already in place; and educated owners and operators about stormwater ordinance compliance and pollution prevention.

iv. The prior permit required the permittees to control the discharge of pollutants from residential areas, to track and report materials in the MS4 originating from residential sources, to educate the public regarding illegal discharges from residential areas, and to continue to implement programs to control litter, trash, and other anthropogenic materials in urban runoff.

The prior permit required the permittees to "continue to maintain adequate legal authority to control the contribution of pollutants to their MS4s and enforce those authorities."[721] "Pollutant" was defined by the prior permit broadly to mean "any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated."[722] The prior permit explains that

---

[718] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37, emphasis added.

[719] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Section IX.C.7).

[720] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Section IX.C.7), emphasis added.

[721] Exhibit A, Test Claim, filed January 31, 2011, pages 377, 382 (Order No. R8-2002-0011, Sections I.B.1.a, V.A).

[722] Exhibit A, Test Claim, filed January 31, 2011, page 442 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

urban runoff includes "discharges from *residential*, commercial, industrial, and construction areas within the Permit Area" and "consist[s] of storm water and non-storm water surface runoff from drainage sub-areas with various, often mixed, land uses within all of the hydrologic drainage areas that discharge into the Waters of the U.S."[723] Thus, under the prior permit, the permittees were required to enforce their stormwater ordinances to control the discharge of pollutants in urban runoff, which includes "discharges from residential… areas within the Permit Area."[724]

As part of the illicit discharge elimination program, the prior permit required the permittees to "establish a system to record visual observation information regarding the materials collected from the MS4 (e.g. paper, plastic, wood, glass, vegetative litter, and other similar debris," to describe the main source of the material (including whether from residential sources), to note any problem areas, and to include the findings and supporting data in the 2004-2005 annual report.[725]

The prior permit also required the permittees to develop educational materials for discharges, including illegal discharges from residential areas, and BMP information on household use of fertilizers, pesticides, and other chemicals as follows:

> F. Within twelve (12) months of this Order's adoption, the Public Education Committee shall develop BMP guidance for restaurants, automotive service centers, and gasoline service stations, and the *discharges listed in Section II.C. of this Order*,[726] where appropriate, for the Co-Permittees to distribute to these facilities.

---

[723] Exhibit A, Test Claim, filed January 31, 2011, page 364 (Order No. R8-2002-0011, Finding 13), emphasis added.

[724] Exhibit A, Test Claim, filed January 31, 2011, page 364 (Order No. R8-2002-0011, Finding 13).

[725] Exhibit A, Test Claim, filed January 31, 2011, page 385 (Order No. R8-2002-0011, Section VI.D).

[726] Section II.C of the prior permit lists the following discharges as exempt from the permit prohibition on non-stormwater discharges, including the following discharges for which BMP guidance relevant to residential areas were required to be developed and distributed:

> …
>
> 2. Discharges from potable water line flushing and other potable water sources;
>
> …
>
> 4. Discharges from landscape irrigation, lawn/garden watering and other irrigation waters;
>
> 5. Air conditioning condensate;
>
> …

G. Within twelve (12) months of this Order's adoption, the Permittees shall develop public education materials to encourage the public to report (including a hotline line number to report) *illegal dumping from residential*, industrial, construction and commercial sites into public streets, storm drains and other waterbodies, clogged storm drains, faded or missing catch basin stencils and *general Urban Runoff and BMP information*. This hotline and website shall continue to be included in the public and business education program and shall be submitted for listing in the governmental pages of all major regional phone books.

H. Within eighteen (18) months of this Order's adoption, the Permittees shall develop BMP guidance for the *household use of fertilizers, pesticides, and other chemicals*, mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. Additionally, *BMP guidance shall be developed for categories of discharges listed in Section II.C*, identified to be significant sources of pollutants unless appropriate BMPs are implemented. *These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings, and/or mail*.[727]

According to the 2006 DAMP,[728] as part of the public behavior education program, the permittees developed and distributed brochures "regarding illegal dumping, disposal of

---

9. Passive foundation drains;

10. Passive footing drains;

11. Water from crawl space pumps;

12. Non-commercial vehicle washing, (e.g. residential car washing (excluding engine degreasing) and car washing fundraisers by non-profit organization);

…

14. Dechlorinated swimming pool discharges;

…

16. Other types of discharges identified and recommended by the Permittees and approved by the Regional Board.

Exhibit A, Test Claim, filed January 31, 2011, pages 379-380 (Order No. R8-2002-0011, Section II.C).

[727] Exhibit A, Test Claim, filed January 31, 2011, page 408 (Order No. R8-2002-0011, Sections X.F, X.G, and X.H), emphasis added.

[728] As stated above, the 2006 DAMP was made enforceable by the prior permit. Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

Household Hazardous Waste and Antifreeze, Batteries, Oil and Paint disposal information, lawn and garden maintenance brochures, car washing, fertilizer, pesticide and household chemical use, pet care brochure, and home garden care guide."[729]

Additionally, as the prior permit's Fact Sheet indicates, BMP brochures targeting residential activities were developed before the prior permit term, including a "pet waste brochure, BMP brochure for horse owners, BMP brochure for pool discharges and a general outreach brochure for residents that hire contractors."[730]

The permittees also administered several area-wide programs for household hazardous waste collection under the first and second term permits.[731] The prior permit states as follows:

> The Permittees have implemented programs to control litter, trash, and other anthropogenic materials in Urban Runoff. In addition to the municipal ordinances prohibiting litter, *the Permittees should continue to participate or organize a number of other programs such as* solid waste collection programs, *household hazardous waste collections*, hazardous material spill response, catch basin cleaning, additional street sweeping, and recycling programs to reduce litter and illegal discharges. These programs should effectively address urban sources of these materials. This Order includes requirements for continued implementation of these programs for litter, trash, and debris control.[732]

According to the 2006 DAMP, which was made enforceable by the prior permit,[733] "The District, in its role as Principal Permittee, administers or participates in several interagency programs in consultation with the…Co-Permittees… These interagency programs under agreement as of May 2005 include… Household Hazardous Waste Collection/Antifreeze, Battery, Oil and Latex Paint (ABOP) Program."[734]

> The Permittees participate in the HHW and ABOP collection programs in conjunction with the Riverside County Department of Environmental

---

[729] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 42-43.

[730] Exhibit A, Test Claim, filed January 31, 2011, page 463 (Order No. R8-2002-0011, Appendix 6 [Fact Sheet]).

[731] Exhibit A, Test Claim, filed January 31, 2011, page 463 (Order No. R8-2002-0011, Appendix 6 [Fact Sheet]).

[732] Exhibit A, Test Claim, filed January 31, 2011, page 374 (Order No. R8-2002-0011).

[733] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

[734] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, Santa Ana and Santa Margarita Regions, July 24, 2006, page 8.

Health (DEH). *The DEH has conducted the collections of HHW and ABOP materials since 1993* to discourage illegal disposal and to assist residents in properly disposing potentially hazardous or toxic materials.[735]

The District "also provides funding to support the County Department of Environmental Health's Household Hazardous Waste collection program."[736]

v. The prior permit required the submission of an annual report to the Regional Board containing descriptions of the activities and data for each of the components of the permit.

Finally, the prior permit required the permittees to submit an annual report documenting their progress in performing the permit activities during the prior year and evaluating their urban runoff managements programs.[737] The prior permit also required the permittees to annually report on the implementation of "control measures to reduce and/or to eliminate the discharge of pollutants, including trash and debris, from MS4s to the Receiving Water."[738]

As principal permittee, the Riverside County Flood Control and Water Conservation District prepared the annual report, and the co-permittees were responsible for submitting to the District all information and materials necessary to comply with the permit.[739]

The prior permit specified that at a minimum, the annual report must include the following:

1. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this Order;

2. An assessment of the effectiveness of control measures established under the illicit discharge elimination program and the DAMP. The effectiveness may be measured in terms of how successful the program has been in eliminating illicit connections/illegal discharges and reducing pollutant loads in Urban Runoff;

3. An assessment of any modifications to the WQMPs, or the DAMP made to comply with CWA requirements to reduce the discharge of pollutants to the MEP;

---

[735] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, Santa Ana and Santa Margarita Regions, July 24, 2006, page 23.

[736] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 19-20.

[737] Exhibit A, Test Claim, filed January 31, 2011, page 382 (Order No. R8-2002-0011).

[738] Exhibit A, Test Claim, filed January 31, 2011, page 385 (Order No. R8-2002-0011).

[739] Exhibit A, Test Claim, filed January 31, 2011, page 428 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program]).

4. A summary, evaluation, and discussion of monitoring results from the previous year and any changes to the monitoring program for the following year;

5. A fiscal analysis progress report as described in Section XV, Provision B., of Order No. RB-2002-0011;

6. A draft work plan that describes the proposed implementation of the WQMPs and the DAMP for next fiscal year. The work plan shall include clearly defined tasks, responsibilities, and schedules for implementation of the storm water program and each Permittee's actions for the next fiscal year;

7. Major changes in any previously submitted plans/policies; and

8. An assessment of the Permittees compliance status with the Receiving Water Limitations, Section 111 of the Order, including any proposed modifications to the WQMPs or the DAMP if the Receiving Water Limitations are not fully achieved.[740]

The permittees were also required to include in the annual report a progress report on the following elements of the permittees' urban runoff management programs:

1. The formal training and coordination meeting needs for the Co-Permittees' staff responsible for performing compliance survey/inspections or educational programs;

2. Source identification and prioritization;

3. Grading and erosion control for construction sites;

4. Verification of coverage under the appropriate General Construction and Industrial Activities Permits;

5. Facility inspection and enforcement consistent with local ordinances, rules, and regulations;

6. Procedures for reporting to the Permittees and this Regional Board non-compliance with each Co-Permittee's Storm Water Ordinance and enhancing current planning review processes to better address issues regarding Urban Runoff;

7. Implementation of new development BMPs, or identification of regional or subregional Urban Runoff treatment/infiltration BMPs in which New Development projects could participate.[741]

[740] Exhibit A, Test Claim, filed January 31, 2011, pages 427-428 (Order No. R8-2002-0011, Appendix 3 [Monitoring and Reporting Program]).

[741] Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011).

b. Sections XI.D.1 and XI.D.7 of the test claim permit impose a state-mandated new program or higher level of service to identify commercial facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities and determine if those facilities warrant additional inspection, and to develop a mobile business enforcement strategy, respectively.[742]

i. The requirements in Section XI.D.1 are new.

Section XI.D.1 of the test claim permit requires each co-permittee, within 18 months of adoption of the test claim permit, to identify any commercial facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities (e.g., private golf courses, athletic fields, cemeteries, and private parks) and determine if these facilities warrant additional inspection to protect water quality.[743] The test claim permit explains the rationale for targeting facilities that handle pre-production plastic pellets, or "nurdles," as follows:

Recent information shows that plastic wastes and materials released to surface water bodies can harm aquatic species by entanglement or ingestion. . . Nurdles are a major contributor to marine debris. During a three month study of Orange County researchers found them to be the most common beach contaminant. Nurdles comprised roughly 98% of the beach debris collected in a 2001 Orange County study.[744] The claimants assert that the activities required by Section XI.D.1 are mandated by the state and not required by federal law, pointing to the federal regulations that set forth the list of facilities required to be inspected under the CWA as limited to "municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986, and industrial facilities that a municipality has determined to be contributing a substantial pollutant loading to the municipal storm sewer system."[745] While the Regional Board concedes that the requirements imposed by Section XI.D.1 are new, it contends that "[c]onsistent with the iterative approach to meeting the minimum federal MEP standard, these additional requirements were designed to remedy deficiencies in the existing inspection program and to increase pollutant reduction."[746]

The requirements in Section XI.D.1 to identify commercial facilities that handle pre-production plastic pellets and managed turf facilities and determine if they warrant additional inspection are new. While federal law imposes requirements pertaining to

---

[742] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

[743] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

[744] Exhibit A, Test Claim, filed January 31, 2011, page 144 (test claim permit).

[745] Exhibit A, Test Claim, filed January 31, 2011, pages 44-45.

[746] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32.

industrial facilities where "significant materials," *including plastic pellets*, remain and are exposed to stormwater, those requirements are imposed on dischargers of stormwater associated with industrial activity, not MS4s, and do not apply to commercial facilities.[747] Federal law also requires MS4 operators to identify for inspection facilities that contribute a substantial pollutant loading to the MS4, but that requirement is limited to industrial facilities and does not apply to commercial facilities.[748] Furthermore, federal law does not expressly require MS4 operators to conduct commercial facility inspections, but rather to conduct inspections as necessary to determine compliance with permit conditions, including prohibiting IC/IDs and dumping or disposal of material other than stormwater to the MS4.[749]

Under the prior permit, the permittees were required to inspect commercial facilities;[750] to develop an inventory of commercial facilities;[751] to prioritize and specify their inspection frequency based on their potential for, or history of, unauthorized, non-stormwater discharges;[752] and to enforce their stormwater ordinances prohibiting nonexempt non-storm water discharges at commercial facilities.[753] However, the specific commercial facilities to be inventoried largely depended on whether the permittees had existing commercial inspection programs in place.[754] For the three permittees with an existing commercial facilities inspection program, the prior permit required them to develop and maintain an inventory of commercial facilities surveyed or inspected under their existing programs.[755] For the remaining permittees, the prior

---

[747] Code of Federal Regulations, title 40, sections 122.26(b)(12) (defining "significant materials" as including plastic pellets); 122.26(b)(14) (defining "storm water discharge associated with industrial activity" as including stormwater discharges from "areas where industrial activity has taken place in the past and *significant materials* remain and are exposed to storm water," emphasis added); 122.26(c)(1)(i)(A) (requiring the operator of a stormwater discharge associated with industrial activity to provide a site map showing topography of the facility, including "each past or present area used for outdoor storage or disposal of significant materials" and a narrative description of "[s]ignificant materials that in the three years prior have been treated, stored or disposed in a manner to allow exposure to storm water").

[748] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(C).

[749] Code of Federal Regulations, title 40, section 122.26(d)(2)(i); *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 770, citing United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[750] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011).

[751] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

[752] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011).

[753] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011).

[754] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

[755] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

permit required them to include in their inventory information from the Compliance Assistance Program (CAP)[756] relevant to their jurisdiction, "including automobile mechanical repair, maintenance, fueling, or cleaning; automobile and other vehicle body repair or painting; painting and coating; pool, lake and fountain cleaning (base of operations)."[757] Moreover, the prior permit specified commercial facilities which, at a minimum, must be inventoried by all permittees, including: mobile businesses; nurseries and greenhouses; landscape and hardscape installation and, "[o]ther commercial sites/sources that the Permittee determines may contribute a significant pollutant load to the MS4."[758]

Commercial facilities handling pre-production plastic pellets and managed turf facilities are *not* among the commercial facilities or businesses the prior permit specifically required the permittees to inventory or evaluate. Nor would *all* commercial facilities handling pre-production plastic pellets and managed turf facilities be captured in the CAP or Municipal Wastewater Pre-Treatment inspection programs. While the prior permit required the permittees to develop an inventory of "[o]ther commercial sites/sources that the Permittee determines may contribute a significant pollutant load to the MS4," the record does not establish that at the time that inventory was required ("within twenty-four (24) months of this Order's adoption"), the permittees were aware that commercial facilities that transport, store, or transfer pre-production plastic pellets "may contribute a significant pollutant load to the MS4".[759] The Regional Board alleges that the permittees' 2006 annual report failed to contain provisions controlling facilities that store or transfer pre-production plastic pellets:

> Preliminary findings contained in the 2006 Annual Progress Report for the MS4 program ("2006 Annual Report") observed that, next to paper, plastic was the second most prevalent litter in the permit area. Plastic litter was found to be distributed equally among residential, commercial and industrial sources. Other types of litter, including styrofoam (which is a form of plastic) were found to be predominant in industrial areas. While the Permittees' recommendations in the 2006 Annual Report for improving effectiveness of litter management may be adequate to address larger litter such as nondeteriorated plastic bags, containers made of styrofoam,

---

[756] The Compliance Assistance Program or "CAP" is a program implemented by the Riverside County Flood Control and Water Conservation District and the County of Riverside as part of the enforcement and compliance strategy (E/CS). The CAP includes a storm water survey component as part of existing inspections of hazardous material handlers and retail food service activities (industrial and commercial facilities). Exhibit A, Test Claim, filed January 31, 2011, pages 369-370 (Order No. R8-2002-0011, Finding 31).

[757] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

[758] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011), emphasis added.

[759] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011).

> etc. that are discarded into the streets and the MS4s, *the 2006 Annual Report failed to contain sufficient provisions for controlling smaller facilities that transport, store or transfer pre-production plastic pellets*. The small size of the pre-production pellets makes then [sic] both difficult to control and very harmful to aquatic organisms. Requiring inspection of facilities that transport, store, or transfer pre-production plastic pellets is a reasonable and practicable requirement to reduce pollutants consistent with the federal minimum MEP standard.[760]

The Regional Board concedes, however, that identifying managed turf facilities is new, and not covered by the permittees' prior inspection program:

> The 2010 Permit also required Permittees to identify within their jurisdictions managed turf facilities such as private golf courses, athletic fields, cemeteries, and private parks. *These types of facilities are not currently covered by the County's Compliance Assistance Program inspections that include the stormwater compliance survey*. These facilities are potential sources of nutrients and pathogens which are primary pollutants of concern for the permit area. These facilities also typically require a significant amount of irrigation and the irrigation runoff could be a significant source of nutrients and other pollutants in dry weather runoff. These discharges and the pollutants that they carry generally enter the MS4 systems. Identification and inspection of the managed turf facilities will result in reduced pollutant discharges to surface waters, and is a reasonable and practicable approach to reducing pollutants consistent with the federal minimum MEP standard.[761]

Thus, the requirements in Section XI.D.1, to identify any facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities and determine if these facilities warrant additional inspection within 18 months of the adoption of the test claim permit, are new.

ii. The requirement in Section XI.D.7 is new.

Section XI.D.7 of the test claim permit requires the co-permittees, within 24 months of adoption of the test claim permit, to develop an enforcement strategy to address mobile businesses.[762]

The Regional Board contends that because the prior permit required prioritization and inspection of inventoried commercial facilities, including mobile businesses, "[i]t logically

---

[760] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32, emphasis added.

[761] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32, emphasis added.

[762] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

follows that Permittees should have the ability to enforce violations of their ordinances found during these commercial inspections."[763]

The claimants argue that Section XI.D.7 requires development of a *specific* mobile business enforcement *strategy*, not merely a continuation of the inspection, documentation, and stormwater ordinance enforcement activities required by the prior permit, which remain separately required under the test claim permit.[764] The claimants assert that finding that the prior permit requirements "amount to an enforcement strategy" is speculative, does not comport with the judgment of the Water Board to separately require the development of "a specific *enforcement strategy* for mobile businesses," and disregards the test established by the California courts for determining whether a permit provision is new: comparing the legal requirements imposed by the new permit with those in effect before the new permit became effective.[765]

Neither the test claim permit nor the attendant Fact Sheet defines "mobile business enforcement strategy" as used in Section XI.D.7. Merriam Webster defines "strategy" as "a careful plan or method" or "the art of devising or employing plans…toward a goal.[766]

The Commission finds that the requirement in Section XI.D.7 to develop a mobile business enforcement strategy is new.

The prior permit required the co-permittees, as part of their Enforcement/Compliance Strategy (E/CS), to inventory and prioritize inspection of mobile businesses based on threat to water quality,[767] inspect mobile businesses for compliance with local stormwater ordinances,[768] enforce ordinances "prohibiting nonexempt non-storm water discharges at commercial facilities," and document inspections performed and any actions taken.[769] Moreover, the prior permit required commercial inspections to

---

[763] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 33.

[764] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 19.

[765] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 19, citing *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559, emphasis in original.

[766] Exhibit N (26), Merriam-Webster Dictionary, strategy, https://www.merriam-webster.com/dictionary/strategy (accessed on February 2, 2024).

[767] Exhibit A, Test Claim, filed January 31, 2011, pages 403-404 (Order No. R8-2002-0011, Sections IX.C.2, IX.C.4).

[768] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011, Section IX.C.5).

[769] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Sections IX.C.8, IX.C.9).

address, at a minimum, compliance with each co-permittee's stormwater ordinances and the Enforcement/Compliance Strategy.[770]

The Enforcement/Compliance Strategy "addresse[d] compliance strategies with regard to …commercial facilities"[771] and "propose[d] a prioritization scheme and response outline."[772] "The goal of the Enforcement/Compliance Strategy was to document the *enforcement* of storm water ordinances fairly and consistently throughout the SAR [Santa Ana Region]."[773] As the prior permit explains, the E/CS "provides criteria for characterizing the significance of violations, criteria for prioritizing violations, appropriate response actions corresponding to the priority of violations and identifies the hierarchy of enforcement/compliance responses."[774] Notably, these stormwater ordinance enforcement and compliance strategies were integrated into the DAMP as "guidelines for the Permittees in implementing enforcement actions appropriate for a given violation." The 2006 DAMP, which the permittees were required to implement under the prior permit,[775] outlines the Enforcement/Compliance Strategy as including: prioritizing violations based on various factors; categorizing the severity of the violations based upon the factors and circumstances associated with a violation; and appropriate enforcement/compliance responses based on the severity of the violations.[776]

Additionally, the prior permit required the permittees to annually review and evaluate their stormwater ordinance enforcement practices "to assess their effectiveness in prohibiting non-exempt, non-storm water discharges to the MS4," including "[d]ischarges resulting from cleaning, repair, or maintenance of equipment, machinery, or facilities, including motor vehicles" and "wash water from mobile auto detailing and washing, steam and pressure cleaning, carpet cleaning, etc.," further evidence that the

[770] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011, Section IX.C.6).

[771] Exhibit A, Test Claim, filed January 31, 2011, pages 369-370 (Order No. R8-2002-0011, Finding 31).

[772] Exhibit A, Test Claim, filed January 31, 2011, page 468 (Order No. R8-2002-0011, Appendix 6 [Fact Sheet])).

[773] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 10, emphasis added.

[774] Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011, Section IX).

[775] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

[776] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 10-15.

permittees were already required to "devise or employ a plan" toward the goal of increasing the effectiveness of their ordinances and enforcement practices."[777]

Thus, under the prior permit, and as part of their Enforcement/Compliance Strategy, the permittees had to inventory mobile businesses and prioritize and inspect them at least once or more during the permit term, depending on their threat to water quality; enforce the ordinances against mobile businesses; and document compliance and inspection efforts, including what action was taken.[778]

The inspection, enforcement, and related documentation activities required under the prior permit are still required by the test claim permit.[779] Section XI.D.7 is a separate provision and additionally requires the development of an enforcement strategy addressing mobile businesses *within 24 months of adoption of the test claim permit*. Under the rules of interpretation,[780] the Commission must construe each provision in the test claim permit in light of the entire permit, harmonizing all provisions relating to the same subject matter to the extent possible and "avoiding an interpretation that renders any word surplusage":

> In construing a regulation, we take heed of the following guideposts: Our task is to arrive at a construction that carries out regulatory intent. (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1 Cal.Rptr.3d 207.) "The words used are the primary source for identifying the drafter's intent. [Citation.] We give those words their usual and ordinary meaning where possible. [Citations.] We give significance to every word, avoiding an interpretation that renders any word surplusage. [Citation.] We also interpret the words of a regulation in context, harmonizing to the extent possible all provisions relating to the same subject matter. [Citation.]" (*Id.*

---

[777] Exhibit A, Test Claim, filed January 31, 2011, page 383 (Order No. R8-2002-0011, Section V.F).

[778] Exhibit A, Test Claim, filed January 31, 2011, pages 403-405 (Order No. R8-2002-0011, Sections IX.C.2, IX.C.4, IX.C.5, IX.C.6, IX.C.8, and IX.C.9); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

[779] Compare Exhibit A, Test Claim, filed January 31, 2011, pages 403-405 (Order No. R8-2002-0011, Sections IX.C.2, IX.C.4, IX.C.5, IX.C.6, IX.C.8, and IX.C.9) with Exhibit A, Test Claim, filed January 31, 2011, pages 200-201 (test claim permit, Sections XI.A.1 [maintain an inspection database inventory of commercial facilities], XI.A.2 [maintain inspection and enforcement action documentation], XI.A.9 [respond to third party complaints regarding commercial facilities], XI.A.10 [enforce stormwater permits at commercial facilities]) and 205-206 (test claim permit, Sections XI.D.3 [prioritize inspection of commercial facilities based on threat to water quality], XI.D.4 [specifies minimum inspection frequencies]).

[780] An administrative regulation is subject to the same principles of interpretation as a statute. (*County of Sacramento v. State Water Resources Control Bd.* (2007) 153 Cal.App.4th 1579, 1586.)

at pp. 1505-1506, 1 Cal.Rptr.3d 207.) "'If the language is clear, there is no need to resort to other indicia of intent; there is no need for construction. [Citation.]' [Citation.]" (*Gregory v. State Bd. of Control* (1999) 73 Cal.App.4th 584, 593–594, 86 Cal.Rptr.2d 575.)[781]

Thus, when two provisions touch upon a common subject, as is the case here, they must be harmonized in such a way that no part of either provision becomes surplusage, meaning no part should be interpreted as duplicating another or having no consequence.[782] The Commission must therefore presume that the Regional Board intended every word, phrase, and provision in the test claim permit to have meaning and to perform a useful function.[783] Had the Regional Board intended to include an enforcement strategy addressing mobile businesses as part of those continuing commercial inspection and enforcement requirements, it would not have separately required the development of a mobile business-specific strategy in a separate provision with its own unique, 24-month timeline – otherwise Section XI.D.7 would be "surplusage."

Accordingly, Section XI.D.7, requiring the permittees to develop an enforcement strategy addressing mobile businesses within 24 months of the adoption of the test claim permit, imposes a new requirement that is separate from and in addition to the commercial facilities inspection and enforcement procedures specified in both the prior permit and test claim permit.[784]

iii. The new activities required by Sections XI.D.1 and XI.D.7 of the test claim permit mandate a new program or higher level of service.

As stated above, the following activities in Sections XI.D.1 and XI.D.7 of the test claim permit are new:

- Within 18 months of adoption of the test claim permit, identify any facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities (e.g., private golf courses, athletic fields, cemeteries, and private parks) and determine if these facilities warrant additional inspection to protect water quality.[785]

---

[781] *Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 148–149.

[782] *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.

[783] *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476, citing *Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 233 ("We must presume that the Legislature intended 'every word, phrase and provision ... in a statute ... to have meaning and to perform a useful function.'").

[784] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

[785] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

- Within 24 months of adoption of the test claim permit, the co-permittees shall develop an enforcement strategy to address mobile businesses.[786]

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[787]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[788] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[789]

Here, the Regional Board argues that the requirements in Section XI.D.1 are necessary to meet the MEP standard under federal law because they aim to remedy deficiencies in the existing inspection program and increase pollutant reduction.[790] Similarly for Section XI.D.7, the Regional Board argues that the requirement to develop a mobile business enforcement strategy is a reasonable and practical requirement "designed to reduce pollutants consistent with the federal minimum MEP standard."[791]

Federal law, however, gives the Regional Board discretion to determine what controls and inspections are necessary to meet the MEP standard, and does not require any specific activities.[792] Moreover, neither the CWA's MEP standard nor federal

---

[786] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

[787] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[788] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[789] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[790] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32.

[791] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 33.

[792] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 767-768, citing to Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

regulations expressly require commercial facility inspections. As the Supreme Court in the 2016 *Department of Finance* case explained,

> Neither the CWA's "maximum extent practicable" provision nor the EPA regulations on which the State relies expressly required the Operators to inspect these particular facilities or construction sites. The CWA makes no mention of inspections. (33 U.S.C. § 1342(p)(3)(B)(iii).) The regulations required the Operators to include in their permit application a description of priorities and procedures for inspecting certain industrial facilities and construction sites, but suggested that the Operators would have discretion in selecting which facilities to inspect. (See 40 C.F.R. § 122.26(d)(2)(iv)(C)(1).) The regulations do not mention commercial facility inspections at all.
>
> Further, as the Operators explained, state law made the Regional Board responsible for regulating discharges of waste within its jurisdiction. (Wat. Code, §§ 13260, 13263.) This regulatory authority included the power to "inspect the facilities of any person to ascertain whether ... waste discharge requirements are being complied with." (Wat. Code, § 13267, subd. (c).) Thus, state law imposed an overarching mandate that the Regional Board inspect the facilities and sites.[793]

Thus, federal regulations required the permittees to include in their permit application a description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas, and a description of a program, including inspections, to implement and enforce ordinances that prevent illicit discharges to the MS4.[794] But neither the prior permit nor federal law required the co-permittees to identify and inspect commercial facilities that transport, store, or inspect pre-production plastic pellets, or managed turf facilities. Thus, the Regional Board exercised its discretion to require the claimants to identify any facilities that transport, store or transfer pre-production plastic pellets and managed turf facilities (e.g., private golf courses, athletic fields, cemeteries, and private parks) and determine if these facilities warrant additional inspection to protect water quality, and to develop an enforcement strategy addressing mobile businesses.[795]

Accordingly, the Commission finds that the new activities required by Sections XI.D.1. and XI.D.7 are mandated by the state.

Additionally, the new mandated requirements impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[796]

---

[793] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 770.

[794] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A), (B).

[795] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

[796] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

The new requirements are uniquely imposed on the local government permittees in their regulatory capacity and provide a governmental service the public. "The inspection requirements provide a [new program or] higher level of service because they promote and enforce third party compliance with environmental regulations limiting the amount of pollutants that enter storm drains and receiving waters."[797]

Accordingly, Sections XI.D.1 and XI.D.7 of the test claim permit impose a state-mandated new program or higher level of service on the co-permittees to perform the following one-time activities:

- Within 18 months of adoption of the test claim permit, the co-permittees shall identify any facilities that transport, store or transfer pre-preproduction plastic pellets and managed turf facilities (e.g. private golf courses, athletic fields, cemeteries, and private parks) and determine if these facilities warrant additional inspection to protect water quality.[798]
- Within 24 months of adoption of the test claim permit, the co-permittees shall develop an enforcement strategy to address mobile businesses.[799]

c. <u>The requirements in Sections XI.D.6 and XI.E.6 are not new and do not impose a state-mandated new program or higher level of service.</u>

Sections XI.D.6 and XI.E.6 of the test claim permit require the co-permittees to perform the following activities:

- Notify all mobile businesses based or discovered operating within the jurisdiction concerning the minimum source control and pollution prevention BMPs that they must develop and implement.[800]
- Include an evaluation of the residential program in the annual report.[801]

The Commission finds that the activities in Sections XI.D.6 and XI.E.6 of the test claim permit are not new and do not impose a new program or higher level of service.

---

[797] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 630.

[798] Exhibit A, Test Claim, filed January 31, 2011, page 204 (test claim permit, Section XI.D.1).

[799] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

[800] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.6).

[801] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.6).

i. Section XI.D.6 of the test claim permit, pertaining to mobile business inspections, clarifies duties under existing law, but does not mandate a new program or higher level of service.

Section XI.D.6 of the test claim permit requires each co-permittee to notify all mobile businesses based or discovered operating within the jurisdiction regarding minimum source control and pollution prevention BMPS applicable to mobile businesses.[802]

The claimants assert that Section XI.D.6 imposes a new requirement – outreach to mobile businesses operating within a jurisdiction – and is not a continuation of a prior permit requirement.[803]

The Regional Board points out that the prior permit required the permittees to inventory various mobile business operations, as some mobile businesses use solvents and other chemicals and then discharge these pollutants into the MS4.[804] Therefore, "[t]hese illicit discharges are potential sources of pollutants that must be controlled."[805] Thus, the Regional Board asserts, notifying mobile businesses regarding minimum source control and pollution prevention BMPs was already required by the prior permit and the DAMP:

> Section 8.4 of the 2007 DAMP states that the inspection must address "[e]ducation regarding storm water pollution prevention..." To accomplish this, Permittees would need to develop appropriate and enforceable source control and pollution prevention BMPs. The challenged permit provisions are reasonable and practicable requirements designed to reduce pollutants consistent with the federal minimum MEP standard.[806]

The claimants disagree, stating that the prior permit did not require the permittees to provide *all* mobile businesses with information about minimum source control and pollution prevention BMPs.[807] Furthermore, they assert, the fact that the inspection and public information requirements under the prior permit pertaining to commercial facilities remain in the test claim permit separate and apart from the mobile business notification

---

[802] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit).

[803] Exhibit A, Test Claim, filed January 31, 2011, pages 44-45 (Test Claim narrative); Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 19.

[804] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32.

[805] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 32.

[806] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 33.

[807] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 19.

requirements of Section XI.D.6 shows that "the Water Board intended the latter to be a new and independent requirement."[808]

The Commission finds that the activities in Section XI.D.6, to provide mobile businesses with information about minimum source control and pollution prevention BMPs, are not new and do not impose a state-mandated new program or higher level of service because the co-permittees were required by the prior permit to perform these activities.

As part of the requirement to enforce their stormwater ordinances, the co-permittees were required to implement the Enforcement and Compliance Strategy (E/CS).[809] As discussed above, the E/CS "comprises a framework to standardize the implementation and enforcement by the co-permittees of their respective storm water ordinances" by describing the "minimum inspection and enforcement procedures" and outlining "the hierarchy of enforcement/compliance responses," as well as appropriate response actions.[810] The prior permit required the permittees to revise the E/CS by developing and maintaining an inventory database of commercial facilities within their jurisdiction, which included the same categories of mobile businesses listed in Section XI.D.6 of the test claim permit: mobile vehicle washing; mobile carpet, drape or furniture cleaning; and mobile high pressure or steam cleaning.[811] The permittees were then required to prioritize inspections of the commercial facilities within their jurisdiction based on threat to water quality and to establish an inspection frequency of at least one or more inspection during the prior permit term.[812] Therefore, under the prior permit, the permittees were required to inventory mobile businesses and to inspect those businesses at least once during the duration of the permit.

The prior permit required the inspection of mobile business to address, at a minimum, compliance with each co-permittee's stormwater ordinances and the E/CS.[813] The 2006

---

[808] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 19.

[809] Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011, Section IX).

[810] Exhibit A, Test Claim, filed January 31, 2011, page 395 (Order No. R8-2002-0011).

[811] Exhibit A, Test Claim, filed January 31, 2011, page 403 (Order No. R8-2002-0011, Sections IX.C.1, IX.C.2). Compare with language of Section XI.D.6 of the test claim permit: "For purposes of this Order, mobile businesses include: mobile auto washing/detailing; equipment washing/cleaning; carpet, drape, furniture cleaning; and mobile high pressure or steam cleaning activities." Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit).

[812] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011, Sections IX.C.4, IX.C.5).

[813] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011, Section IX.C.6).

DAMP, into which the E/CS was integrated[814] and which constitutes an enforceable part of the prior permit,[815] describes these minimum inspection requirements as including "Implementation and maintenance of appropriate or minimum BMPs," "Qualitative assessment of the effectiveness of the BMPs implemented," and "Education regarding stormwater pollution prevention."[816] The prior permit also required the permittees, through their public education programs, to inform owners and operators of commercial facilities, including mobile businesses, regarding compliance with local stormwater ordinances and coverage under applicable permits.[817]

Thus, under the prior permit, the permittees had to inventory mobile businesses and prioritize and inspect them at least once or more during the permit term, depending on their threat to water quality; [818] inform mobile businesses regarding ordinance compliance, "appropriate or minimum BMPs" and "stormwater pollution prevention;"[819] enforce the ordinances against mobile businesses;[820] and document compliance and inspection efforts, including what action was taken.[821] Therefore, the permittees were already required by the prior permit to provide mobile businesses with information about minimum source control and pollution prevention BMPs as part of their commercial inspection activities, as required by Section XI.D.6 of the test claim permit.

Accordingly, Section XI.D.6 does not impose any new requirements on the permittees and does not mandate a new program or higher level of service.

---

[814] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 10.

[815] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

[816] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

[817] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011).

[818] Exhibit A, Test Claim, filed January 31, 2011, page 404 (Order No. R8-2002-0011, Sections IX.C.4, IX.C.5).

[819] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Section IX.C.6); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 36-37.

[820] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Section IX.C.8).

[821] Exhibit A, Test Claim, filed January 31, 2011, page 405 (Order No. R8-2002-0011, Section IX.C.9).

ii. The requirement in Section XI.E.6, to include in the annual report an evaluation of the residential program, is not new and does not mandate a new program or higher level of service.

Section XI.E.6 states: "Each Co-Permittee shall include an evaluation of its residential program in the Annual Report starting with the second Annual Report after adoption of this Order."[822]

The "residential program" referred to in Section XI.E.6 must be read in the context of Section XI.E as a whole, so as to understand what is being evaluated in the annual report. Section XI.E.1 of the test claim permit reads as follows:

> 1. Within 18 months of adoption of this Order, each Co-Permittee shall develop and implement a residential program *consistent with these requirements* to reduce the discharge of Pollutants from residential activities to the MS4, consistent with the MEP standard.[823]

Under Section XI.E.2, the co-permittees are required to identify residential activities that are potential sources of pollutants; develop and/or enhance fact sheets and BMPs as appropriate; and distribute the fact sheets and BMPs to residents.

> The Co-Permittees shall *identify residential activities that are potential sources of Pollutants and develop and/or enhance Fact Sheets/BMPs as appropriate*. At a minimum, this should include: residential auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes. The Permittees shall *distribute the Fact Sheets/BMPs and appropriate information* from organizations such as the Riverside-Corona Resource Conservation District and USDA's Backyard Conservation Program *to the residents* to ensure that discharges from the residential areas are not causing or contributing to a violation of Water Quality Standards in the Receiving Waters.[824]

Section XI.E.3 requires the co-permittees, collectively or individually, to facilitate the proper collection and management of used oil, toxic and hazardous materials, and other household wastes, and suggests they continue distribution of information regarding the dates and locations of temporary and permanent household hazardous waste and antifreeze, oil, battery and paint collection events and facilities, and financial support of household hazardous waste and antifreeze, oil, battery and paint collection facilities and

---

[822] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.6).

[823] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.1).

[824] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.2), emphasis added.

events or curbside or special collection sites managed by the co-permittees or private entities, such as solid waste haulers.[825]

Section XI.E.4 states that the "Regional Board *recommends* continuation of Co-Permittee efforts to coordinate with local water purveyors and other stakeholders to encourage efficient irrigation and minimize runoff from residential areas.[826]

Section XI.E.5 of the test claim permit reads: "The Co-Permittees shall enforce their Storm Water Ordinance as appropriate to control the discharge of Pollutants associated with residential activities."[827]

And, thus, Section XI.E.6 requires an evaluation of these activities in the annual report.

The claimants contend that neither the CWA nor federal regulations require a residential program evaluation. The claimants allege that the provision cited by the Regional Board in the permit Fact Sheet as support for residential area inspections – the requirement in Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A) to include structural and source control measures to reduce pollutants from urban runoff from residential areas that are discharged from the MS4 – does not "mandate the requirements for residential area enforcement set forth in the 2010 permit."[828]

While the claimants acknowledge that stormwater management programs relating to residential area discharges were part of the prior permit, they argue that the *evaluation* of the residential program is new.[829] Again relying on *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 559, the claimants reason that because there was no express requirement under the prior permit to have a residential program, the requirement to annually evaluate the newly required resident program must also be new.[830]

The Commission finds that the requirement in Section XI.E.6 of the test claim permit, to include an evaluation of the residential program in the annual report, is not new and does not impose a state-mandated new program or higher level of service.

First, while the prior permit did not expressly identify a "residential program," the permittees were required by federal law and the prior permit to prohibit all non-stormwater discharges to the MS4, to identify residential activities that are potential sources of pollutants, develop and implement a program to reduce the discharge of

---

[825] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit).

[826] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit).

[827] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit).

[828] Exhibit A, Test Claim, filed January 31, 2011, page 45 (Test Claim narrative).

[829] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 20.

[830] Exhibit A, Test Claim, filed January 31, 2011, page 45 (Test Claim narrative); Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 20.

pollutants from residential activities to the MS4, to maintain adequate legal authority to enact and enforce ordinances prohibiting and controlling *all* illicit non-stormwater discharges to the MS4s, including those from residential activities, and to submit an annual report to the Regional Board on all components of the stormwater program.[831]

Specifically, federal regulations implementing the CWA require that all applicants for a MS4 permit have a management program that includes stormwater discharges from residential areas as follows:

- The program shall include "structural and source control measures to reduce pollutants from runoff from commercial *and residential areas*…," and the claimants acknowledge this federal law.[832] This shall include "A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities . . . ."[833]
- "A description of a program, including inspections, to implement and enforce an ordinance…[which] shall address all types of illicit discharges; however the following category of non-storm water discharges or flows shall be addressed *where such discharges are identified by the municipality as sources of pollutants*… *landscape irrigation…lawn watering*, *individual residential car washing*…"[834]
- "A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials."[835]
- Permittees are required by federal law to have adequate legal authority established by ordinance that prohibits illicit discharges to the MS4, and controls the discharge of spills, dumping, or disposal of materials other than stormwater to the MS4.[836]

---

[831] United States Code, title 33, section 1342(p)(3)(B)(ii), (iii) (Public Law 100-4); Code of Federal Regulations, title 40, section 122.2; Code of Federal Regulations, title 40, sections 122.26(d)(2)(iv)(A), 122.26(d)(2)(iv)(B), 122.26(d)(2)(i), 122.26(d)(2)(v). 122.42(c); Exhibit A, Test Claim, filed January 31, 2011, pages 364, 374, 377, 379-382, 385, 408, 427-428 (Order No. R8-2002-0011), 463 (Order No. R8-2002-0011, Fact Sheet); Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 8, 23, 42-43.

[832] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A).

[833] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(6).

[834] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B).

[835] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(B)(6).

[836] Code of Federal Regulations, title 40, section 122.26(d)(2)(i).

The federal regulations also require the permittees to assess the controls to estimate "reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program."[837] In addition, federal law requires the submission of an annual report that describes the "status of implementing the components of the storm water management program that are established as permit conditions," "[p]roposed changes to the storm water management programs," and any "[r]evisions, if necessary, to the *assessment* of controls. . . ."[838]

The prior permit complied with this federal law. The prior permit required the permittees to prohibit non-stormwater discharges from entering their MS4s, except for certain categories of "permitted" discharges.[839] For those "permitted" discharges, the permittees were required to identify which ones constituted a significant source of pollutants, and if so, to either prohibit or reduce the discharge through structural and source control BMPs. The permitted discharges included the following discharges from residential areas: landscape irrigation, lawn/garden watering and other irrigation waters; passive foundation and footing drains; air conditioning condensate; water from crawl space pumps; residential car washing; and dechlorinated swimming pool discharges.[840]

Furthermore, as part of the prior permit's illicit discharge elimination program, the permittees were required to "establish a system to record visual observation information regarding the materials collected from the MS4 (e.g. paper, plastic, wood, glass, vegetative litter, and other similar debris," to describe the main source of the material (including whether from residential sources), to note any problem areas, and to include the findings and supporting data in the 2004-2005 annual report.[841]

The test claim permit Fact Sheet acknowledges that the permittees "have already developed BMP fact sheets to address sources from residential activities such as auto washing and maintenance activities; use and disposal of pesticides, herbicides, fertilizers and household cleaners; and collection and disposal of pet wastes."[842] In this respect, the prior permit required the permittees to develop educational materials for discharges, including illegal discharges from residential areas, and BMP information on household use of fertilizers, pesticides, and other chemicals as follows:

> Within twelve (12) months of this Order's adoption, the Public Education Committee shall develop BMP guidance for restaurants, automotive

---

[837] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

[838] Code of Federal Regulations, title 40, section 122.26(d)(2)(v); Code of Federal Regulations, title 40, section 122.42(c).

[839] Exhibit A, Test Claim, filed January 31, 2011, page 379 (Order No. R8-2002-0011).

[840] Exhibit A, Test Claim, filed January 31, 2011, pages 379-380 (Order No. R8-2002-0011).

[841] Exhibit A, Test Claim, filed January 31, 2011, page 385 (Order No. R8-2002-0011).

[842] Exhibit A, Test Claim, filed January 31, 2011, page 343 (test claim permit, Appendix 6 [Fact Sheet]).

service centers, and gasoline service stations, and the *discharges listed in Section II.C. of this Order*, where appropriate, for the Co-Permittees to distribute to these facilities.

Within twelve (12) months of this Order's adoption, the Permittees shall develop public education materials to encourage the public to report (including a hotline line number to report) *illegal dumping from residential*, industrial, construction and commercial sites into public streets, storm drains and other waterbodies, clogged storm drains, faded or missing catch basin stencils and *general Urban Runoff and BMP information*. This hotline and website shall continue to be included in the public and business education program and shall be submitted for listing in the governmental pages of all major regional phone books.

Within eighteen (18) months of this Order's adoption, the Permittees shall develop BMP guidance for the *household use of fertilizers, pesticides, and other chemicals*, mobile vehicle maintenance, carpet cleaners, commercial landscape maintenance, and pavement cutting. Additionally, *BMP guidance shall be developed for categories of discharges listed in Section II.C*, identified to be significant sources of pollutants unless appropriate BMPs are implemented. *These guidance documents shall be distributed to the public, trade associations, etc., through participation in community events, trade association meetings, and/or mail*.[843]

As part of the public behavior education program, the permittees developed and distributed brochures "regarding illegal dumping, disposal of Household Hazardous Waste and Antifreeze, Batteries, Oil and Paint disposal information, lawn and garden maintenance brochures, car washing, fertilizer, pesticide and household chemical use, pet care brochure, and home garden care guide."[844] Additionally, as the prior permit Fact Sheet indicates, BMP brochures targeting residential activities were developed prior to the prior permit term, including a "pet waste brochure, BMP brochure for horse owners, BMP brochure for pool discharges and a general outreach brochure for residents that hire contractors."[845]

The permittees also administered several area-wide programs for household hazardous waste collection under the first and second term permits.[846] The prior permit also states as follows:

---

[843] Exhibit A, Test Claim, filed January 31, 2011, page 408 (Order No. R8-2002-0011), emphasis added.

[844] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 42-43.

[845] Exhibit A, Test Claim, filed January 31, 2011, page 463 (Order No. R8-2002-0011, Fact Sheet).

[846] Exhibit A, Test Claim, filed January 31, 2011, page 463 (Order No. R8-2002-0011, Fact Sheet).

> The Permittees have implemented programs to control litter, trash, and other anthropogenic materials in Urban Runoff. In addition to the municipal ordinances prohibiting litter, *the Permittees should continue to participate or organize a number of other programs such as* solid waste collection programs, *household hazardous waste collections*, hazardous material spill response, catch basin cleaning, additional street sweeping, and recycling programs to reduce litter and illegal discharges. These programs should effectively address urban sources of these materials. This Order includes requirements for continued implementation of these programs for litter, trash, and debris control.[847]

According to the 2006 DAMP, which was made enforceable by the prior permit,[848] "The District, in its role as Principal Permittee, administers or participates in several interagency programs in consultation with the…Co-Permittees… These interagency programs under agreement as of May 2005 include… Household Hazardous Waste Collection/ Antifreeze, Battery, Oil and Latex Paint (ABOP) Program."[849]

> The Permittees participate in the HHW and ABOP collection programs in conjunction with the Riverside County Department of Environmental Health (DEH). *The DEH has conducted the collections of HHW and ABOP materials since 1993* to discourage illegal disposal and to assist residents in properly disposing potentially hazardous or toxic materials.[850]

The District "also provides funding to support the County Department of Environmental Health's Household Hazardous Waste collection program."[851]

The prior permit also required the permittees to "continue to maintain adequate legal authority to control the contribution of pollutants to their MS4s and enforce those authorities."[852] "Pollutant" was defined by the prior permit broadly to mean "any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated."[853] The prior permit explains that

---

[847] Exhibit A, Test Claim, filed January 31, 2011, page 374 (Order No. R8-2002-0011).

[848] Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3) ("The DAMP and amendments thereto are hereby made an enforceable part of this Order").

[849] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 8.

[850] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 23.

[851] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 19-20.

[852] Exhibit A, Test Claim, filed January 31, 2011, pages 377, 382 (Order No. R8-2002-0011).

[853] Exhibit A, Test Claim, filed January 31, 2011, page 442 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

urban runoff includes "discharges from *residential*, commercial, industrial, and construction areas within the Permit Area" and "consist of storm water and non-storm water surface runoff from drainage sub-areas with various, often mixed, land uses within all of the hydrologic drainage areas that discharge into the Waters of the U.S."[854] Thus, under the prior permit, the permittees were required to enforce their stormwater ordinances to control the discharge of pollutants in urban runoff, which includes "discharges from residential… areas within the Permit Area."[855]

Finally, the prior permit required the permittees to include in the annual report their progress in performing the permit activities during the prior year and an evaluation of their individual urban runoff management programs.[856]

Therefore, both federal law and the prior permit required the permittees to include in their annual report the status of implementing the components of the stormwater management program, including measures to identify residential activities that are potential sources of pollutants, develop and implement a program to reduce the discharge of pollutants from residential activities to the MS4, maintain adequate legal authority to enact and enforce ordinances prohibiting and controlling *all* illicit non-stormwater discharges to the MS4s, including those from residential activities, and to submit an annual report to the Regional Board on all components of the stormwater program, now comprising the test claim permit's "residential program."

The claimants argue that this analysis erroneously relies on "isolated residential elements contained in the stormwater management program required of all MS4 permittees in the federal stormwater permit application regulations" and "isolated provisions in the 2002 Permit prohibiting discharges of non-stormwater to the MS4s and various public education requirements applicable to residential (as well as non-residential) activities, including household hazardous waste collections."[857] Yet, as stated above, to understand what is being evaluated in the annual report required under Section XI.E.6, the "residential program" must be read in the context of Section XI.E as a whole, which requires a "residential program" that: identifies residential activities that are potential sources of pollutants, develops and/or enhances fact sheets and BMPs as appropriate, and distributes the fact sheets and BMPs to residents;[858] facilitates the

---

[854] Exhibit A, Test Claim, filed January 31, 2011, page 364 (Order No. R8-2002-0011), emphasis added.

[855] Exhibit A, Test Claim, filed January 31, 2011, page 364 (Order No. R8-2002-0011), emphasis added.

[856] Exhibit A, Test Claim, filed January 31, 2011, pages 382, 385, 427-428 (Order No. R8-2002-0011 and Appendix 3 [Monitoring and Reporting Program]).

[857] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 20.

[858] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.2).

proper collection and management of household hazardous wastes;[859] and enforces stormwater ordinances to control the discharge of pollutants associated with residential activities.[860] When the activities in Section XI.E comprising the required elements of the "residential program" are compared to the federal laws and the prior permit provisions discussed above, none of them impose new activities on the permittees. The fact that these requirements were not bundled and labeled a "residential program" under the prior permit does not mean that the permittees were not required to perform them.

Accordingly, the requirement in Section XI.E.6 of the test claim permit to include an evaluation of the residential program in the annual report is not new and does not impose a state-mandated new program or higher level of service.

6. The Requirements Imposed by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1 and XII.K.5 of the Test Claim Permit on a Municipality as a Project Proponent of a New Development or Significant Redevelopment Project Are Triggered by Local Decisions, Are Not Mandated by the State, and Most Do Not Impose a New Program or Higher Level of Service. In Addition, and as Discussed in Section IV.C of this Decision, even if Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 of the Test Claim Permit Impose New Regulatory Requirements, Which May Mandate a New Program or Higher Level of Service, the Regulatory Requirements Do Not Result in Costs Mandated by the State Because the Claimants Have Fee Authority Sufficient as a Matter of Law to Pay for These Costs Pursuant to Government Code Section 17556(d).

The claimants have pled Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 of the test claim permit pertaining to regulating stormwater discharges from new development and significant redevelopment projects.[861] The alleged newly required activities include:

---

[859] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.3).

[860] Exhibit A, Test Claim, filed January 31, 2011, page 207 (test claim permit, Section XI.E.5).

[861] Exhibit A, Test Claim, filed January 31, 2011, pages 46-54 (Test Claim narrative). The claimants have pled the following Section XII provisions: A.5, B, C.1, D.1, E.1-4 and 6-9, F, G.1, and K.4-5. Section XII.B is addressed separately in Section IV.B.7 of this Decision, below. Section XII.D.2 of the test claim permit characterizes the two categories of development projects subject to the provisions of Section XII, as specified, as (1) new development and (2) significant redevelopment and defines these terms as follows:

> a. All significant re-development projects: Significant re-development is defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site. Significant Redevelopment does not include routine maintenance activities that are

conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing developed site, and the existing development was not subject to WQMP requirements, the numeric sizing criteria discussed below applies only to the addition or replacement, and not to the entire developed site.

Where redevelopment results in an increase of fifty percent or more of the impervious surfaces of a previously existing developed site, the numeric sizing criteria applies to the entire development.

b. For purposes of this Order, the categories of development identified below, shall be collectively referred to as "New Development".

i. New developments that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial and industrial projects and residential housing subdivisions requiring a Final Map. (i.e., detached single family home subdivisions, multi-family attached subdivisions, condominiums, apartments, etc.); mixed use and public projects (excluding Permittee road projects). This category includes development projects on public and private land, which fall under the planning and building authority of the Co-Permittees.

ii. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532-7534, 7536-7539).

iii. Restaurants (with SIC code 5812) where the land area of development is 5,000 square feet or more.

iv. Hillside developments disturbing 5,000 square feet or more which are located on areas with known erosive soil conditions or where the natural slope is twenty-five percent or more.

v. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly into ESAs.

vi. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary parking or storage of motor vehicles.

vii. Retail Gasoline Outlets (RGOs) that are either 5,000 square feet or more with a projected average daily traffic of 100 or more vehicles per day.

viii. Emergency public safety projects in any of the above-listed categories may be excluded if the delay caused due the requirement for a WQMP compromises public safety, public health and/or environmental protection.

- Ensure that appropriate BMPs to reduce erosion and mitigate hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP;[862]
- Review, and if required, amend, each permittee's general plan and related documents (e.g., development standards, zoning codes, conditions of approval) to eliminate barriers to implementation of LID principles and hydrologic conditions of concern, and reflect any changes to the project approval process or procedures in the LIP;[863]
- Submit a revised WQMP to incorporate the new elements required in the test claim permit;[864]
- Perform the following low impact development (LID) and hydromodification management activities:
    - Update and implement the WQMP to address LID principles and hydrologic conditions of concern;[865]
    - Require development projects to infiltrate, harvest and use, evapotranspire, and/or bio-treat the 85th percentile storm event; however, to the extent that entire volume cannot be captured, treat and discharge that portion of the volume in compliance with permit requirements;[866]
    - Incorporate LID site design principles into the revised WQMP, and require development projects to include site design BMPs during the development of the project-specific WQMP;[867]
    - Revise ordinances, codes, and design standards to promote LID techniques;[868]

Exhibit A, Test Claim, filed January 31, 2011, pages 213-214 (test claim permit).

[862] Exhibit A, Test Claim, filed January 31, 2011, pages 47 (Test Claim narrative), 208 (test claim permit, Section XII.A.5).

[863] Exhibit A, Test Claim, filed January 31, 2011, pages 49 (Test Claim narrative), 211 (test claim permit, Section XII.C.1).

[864] Exhibit A, Test Claim, filed January 31, 2011, pages 49 (Test Claim narrative), 213 (test claim permit, Section XII.D.1).

[865] Exhibit A, Test Claim, filed January 31, 2011, pages 49 (Test Claim narrative), 217 (test claim permit, Section XII.E.1).

[866] Exhibit A, Test Claim, filed January 31, 2011, pages 49 (Test Claim narrative), 217 (test claim permit, Section XII.E.2).

[867] Exhibit A, Test Claim, filed January 31, 2011, pages 49-50 (Test Claim narrative), 217-218 (test claim permit, Section XII.E.3).

[868] Exhibit A, Test Claim, filed January 31, 2011, pages 50-51 (Test Claim narrative), 218-219 (test claim permit, Section XII.E.4).

- Implement effective education programs to educate property owners of new development and significant redevelopment projects to use pollution prevention BMPs and to maintain on-site hydrologically functional landscape controls;[869]
- Specify in the revised WQMP the preferential use of site design BMPs that incorporate LID techniques, where feasible, and prioritize the mitigation of structural site design BMPs;[870]
- Continue to ensure through the WQMP review and approval process that development projects do not pose a hydrologic condition of concern, and if a hydrologic condition of concern exists, evaluate whether adverse impacts are likely to occur and if so, require the project proponent to implement additional BMPs to mitigate the impacts;[871]

- Develop standard design and post-development BMP guidance to be incorporated into projects for streets, roads, highways, and freeway

---

[869] Exhibit A, Test Claim, filed January 31, 2011, pages 51 (Test Claim narrative), 219 (test claim permit, Section XII.E.6). Section XII.E.6, which requires each permittee to implement "effective education programs to educate property owners to use Pollution Prevention BMPs and to maintain on-site hydrologically functional landscape controls," is limited to owners of new development and significant redevelopment projects and does not apply to property owners in general. Section XII.E.6 is located within the section of the test claim permit that pertains specifically to minimizing impacts from new development and significant redevelopment projects through low impact development and hydromodification management principles ("Section XII. New Development (Including Significant Redevelopment)"; "Section XII.E. Low Impact Development (LID) and Hydromodification Management to Minimize Impacts from New Development/Significant Redevelopment Projects") and the test claim permit contains a separate section that specifically addresses public education and outreach ("Section XIII. Public Education and Outreach"), the latter of which contains no cross-reference or corollary to the Section XII.E.6 requirement to educate property owners to use pollution prevention BMPs and to maintain on-site hydrologically functional landscape controls. Furthermore, the test claim permit defines Low Impact Development (LID) as "a set of technologically feasible and cost-effective approaches to storm water management and land development *that combines a hydrologically functional site design with Pollution Prevention measures* to compensate for land development impacts on hydrology and water quality." Exhibit A, Test Claim, filed January 31, 2011, page 282 (test claim permit, Appendix 4 [Glossary], emphasis added). Thus, Section XII.E.6 requires the permittees to educate new development and significant redevelopment property owners on how to use and maintain LID techniques in their development projects.

[870] Exhibit A, Test Claim, filed January 31, 2011, pages 51 (Test Claim narrative), 219-220 (test claim permit, Sections XII.E.7 and XII.E.8).

[871] Exhibit A, Test Claim, filed January 31, 2011, pages 51-53 (Test Claim narrative), 220-221 (test claim permit, Section XII.E.9).

improvements, under the jurisdiction of the co-permittees to reduce the discharge of pollutants from the projects to the MEP, and submit the draft guidance to the executive officer for review and approval;[872]

- Implement the approved standard design and post-development BMP guidance for all road projects;[873]
- Develop criteria for project evaluation to determine the feasibility of implementing LID BMPs;[874]
- Maintain a database to track the operation and maintenance of structural post-construction BMPs installed after adoption of the test claim permit;[875] and

---

[872] Exhibit A, Test Claim, filed January 31, 2011, pages 51 (Test Claim narrative), 221-222 (test claim permit, Section XII.F.1). Section XII.F.1 requires the co-permittees to develop standard design and post-development BMP guidance "to be incorporated into projects for streets, roads, highways, and freeway improvements, under the jurisdiction of the Co-Permittees." The test claim permit does not explain which road projects fall "under the jurisdiction of the co-permittees." According to the Fact Sheet, permittee-proposed new development and significant redevelopment road projects are subject to a different review and approval process than non-permittee road projects, the latter of which are typically incorporated into the broader development project's WQMP and subject to the WQMP review and approval process. Nonetheless, when read together, the plain language of Sections XII.F.1 and XII.F.2 shows that "road projects under the jurisdiction of the co-permittees," as that phrase is used in Section XII.F.1, includes both permittee and non-permittee road projects. Section XII.F.1 requires the co-permittees in their regulatory capacity to develop standard design and post-development BMP guidance to be incorporated "into projects for streets, roads, highways, and freeway improvements, *under the jurisdiction of the Co-Permittees*," and to submit that draft guidance to the executive officer for review and approval. Section XII.F.2 then requires the permittees in their regulatory capacity to implement the Section XII.F.1 guidance "for *all* road projects," meaning that under Section XII.F.2, both municipal and non-municipal road projects are subject to the Section XII.F.1 standard design and post-development BMP guidance. Thus, Sections XII.F.1 and XII.F.2 impose requirements on the permittees in their capacity as regulators of new development and significant redevelopment road projects, and Section XII.F.2 also imposes requirements on the permittees in their capacity as municipal road project proponents.

[873] Exhibit A, Test Claim, filed January 31, 2011, pages 51 (Test Claim narrative), 222 (test claim permit, Section XII.F.2). Section XII.F.2 requires the permittees to implement design and post-development BMP guidance for all new development and significant redevelopment road projects, which the project proponents, including the permittees in their capacity as municipal project proponents, are required to abide by.

[874] Exhibit A, Test Claim, filed January 31, 2011, pages 54 (Test Claim narrative), 222 (test claim permit, Section XII.G.1).

[875] Exhibit A, Test Claim, filed January 31, 2011, pages 54, 58 (Test Claim narrative), 225 (test claim permit, Section XII.K.4).

- Inspect all permittee-owned structural post-construction BMPs installed after the date of the test claim permit.[876]
- Develop an inspection frequency for new development and significant redevelopment projects and inspect the structural post construction BMPs for all new development and significant redevelopment projects within the five-year permit term. The co-permittees shall ensure that the BMPs are operating and are maintained properly and all BMPs are working effectively to remove pollutants in runoff from the site. All inspections shall be documented and kept as a permittee record.[877]

The prior permit imposed requirements with respect to new development and significant redevelopment, and defined those projects, and, thus, some of the above requirements are not new.[878] The Fact Sheet for the test claim permit states, however, that "[t]his Order incorporates new project categories and revised thresholds for several categories of New Development and Significant Redevelopment projects" as follows:

> New project categories include streets, roads and highways of 5,000 square feet or more of paved surface and retail gasoline outlets (RGOs) with 5,000 square feet or more with 100 or more average daily vehicle traffic. The threshold criteria that trigger the WQMP requirement for nonresidential commercial/industrial construction projects have been reduced from 100,000 square feet to 10,000 square feet or more of impervious surface. The threshold for residential subdivision projects has also been revised from 10 units or more to a threshold of 10,000 square feet or more of impervious surface.[879]

Thus, with respect to the new project categories and projects that meet the reduced threshold criteria, the requirements are likely new.

However, the requirements imposed by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit on a municipality as a project proponent of a new development or significant redevelopment project are triggered by local decisions, are not mandated by the state, and some do not impose a new program or higher level of service. Additionally, the requirements imposed on the permittees to comply with Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 of the test claim permit, as a project proponent of a municipal new development or significant development project, are not

---

[876] Exhibit A, Test Claim, filed January 31, 2011, pages 54, 58 (Test Claim narrative), 225-226 (test claim permit, Section XII.K.5).

[877] Exhibit A, Test Claim, filed January 31, 2011, pages 54, 58 (Test Claim narrative), 225-226 (test claim permit, Section XII.K.5).

[878] Exhibit A, Test Claim, filed January 31, 2011, pages 386, 390-391 (Order No. R8-2002-0011).

[879] Exhibit A, Test Claim, filed January 31, 2011, page 341 (test claim permit, Appendix 6 [Fact Sheet]).

unique to government, do not provide a peculiarly governmental service to the public, and therefore do not impose a new program or higher level of service. Moreover, and as discussed in Section IV.C of this Decision, the claimants have fee authority sufficient to cover the costs of all the activities required to be performed pursuant to the co-permittees' regulatory authority and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(d).

a. The requirements imposed by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit on a municipality as a project proponent of a new development or significant redevelopment project are triggered by local decisions, are not mandated by the state, and do not impose a new program or higher level of service.

The claimants seek reimbursement "to incorporate and require development and significant redevelopment projects proposed by the permittees to incorporate LID principles," but do not specify which Section XII provisions impose these requirements.[880] In addition to imposing requirements on the permittees in their regulatory capacity, some of the activities required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 apply to the permittees' own development projects.

Section XII.A.5 applies to replacement and construction of culverts and bridge crossings, which could be present on both the permittees' own development projects and development projects other than those proposed by the permittees.[881]

Section XII.C.1 requires changes to the development project approval process and procedures to eliminate barriers to implementation of LID principles and hydrologic conditions of concern, which municipal development projects must comply with.[882]

Section XII.D.1 requires the permittees to revise the Water Quality Management Plan (WQMP or model WQMP) to incorporate the new elements required in the test claim permit, and to implement the WQMP by requiring project-specific WQMPs for new development and significant redevelopment projects, including municipal development projects.[883]

Section XII.E.1 requires the permittees to update the WQMP to address LID principles and hydrologic conditions of concern and to implement the updated WQMP, which new

[880] Exhibit A, Test Claim, filed January 31, 2011, page 46 (Test Claim narrative).

[881] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.5).

[882] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.C.1).

[883] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1).

development and significant redevelopment projects, including municipal development projects, must comply with when submitting their project-specific WQMPs.[884]

Section XII.E.2 requires development projects, including permittee development projects, to infiltrate, harvest and use, evapotranspire and/or bio-treat the 85th percentile storm event.[885] Section XII.E.2 also requires the permittees to ensure that those development projects comply with the design capture volume requirement.

Section XII.E.3 requires that the co-permittees "shall require that New Development and Significant Redevelopment projects [which include permittee development projects] include Site Design BMPs during the development of the project-specific WQMP" with the design goal of maintaining or replicating "the pre-development hydrologic regime through the use of design techniques that create a functionally equivalent post-development hydrologic regime through site preservation techniques and the use of integrated and distributed infiltration, retention, detention, evapotranspiration, filtration and treatment systems."[886]

Section XII.E.4 requires the permittees to revise their local ordinances, codes, and building and landscape design standards to promote green infrastructure and LID techniques, which the new development and significant redevelopment project proponents, including the permittees in their capacity as municipal project proponents, are required to abide by.[887]

Section XII.E.9 also requires the proponent of a development project, including permittee development projects, to include in the project-specific WQMP an evaluation of specific HCOC factors if a HCOC exists; and if the evaluation determines adverse impacts are likely to occur, requires the project proponent to implement additional BMPs to mitigate the impacts.[888]

Section XII.F.2 requires the permittees to implement design and post-development BMP guidance for all new development and significant redevelopment road projects, which the project proponents, including the permittees in their capacity as municipal project proponents, are required to abide by.[889]

---

[884] Exhibit A, Test Claim, filed January 31, 2011, pages 49 (Test Claim narrative), 217 (test claim permit, Section XII.E.1).

[885] Exhibit A, Test Claim, filed January 31, 2011, page 217 (test claim permit, Section XII.E.2).

[886] Exhibit A, Test Claim, filed January 31, 2011, pages 217-218 (test claim permit, Section XII.E.3).

[887] Exhibit A, Test Claim, filed January 31, 2011, page 218 (test claim permit, Section XII.E.4).

[888] Exhibit A, Test Claim, filed January 31, 2011, pages 220-221 (test claim permit, Section XII.E.9).

[889] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.F.2).

Section XII.G.1 requires the development of criteria for project evaluation to determine the feasibility of implementing LID BMPs, and requires development projects, including municipal development projects, to complete a feasibility analysis based on the approved criteria in order to be considered for alternatives to and in-lieu of the LID and hydromodification management requirements imposed by the test claim permit.[890]

Section XII.K.5 requires the co-permittees to inspect *all permittee-owned* structural post-construction BMPs, and to develop an inspection frequency for all new development and significant redevelopment projects based on the type of project and structural post-construction BMPs deployed.[891]

Therefore, Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit impose requirements on the permittees as proponents of new development and significant redevelopment projects.

The claimants contend that these activities are eligible for reimbursement under article XIII B, section 6 of the California Constitution when they propose new public development or redevelopment projects and incur costs related to LID and hydromodification for "any municipal project, including projects constructing or rehabilitating hospitals, medical facilities, parks, parking lots and other facilities."[892] The claimants further assert that development and upkeep of these municipal land uses is not optional, but are an integral part of the permittees' function as municipal entities because the "failure to repair, upgrade or extend such facilities can pose a threat to public health and safety, and expose the permittees to liability."[893], [894]

---

[890] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.G.1).

[891] Exhibit A, Test Claim, filed January 31, 2011, pages 225-226 (test claim permit, Section XII.K.5).

[892] Exhibit A, Test Claim, filed January 31, 2011, page 55 (Test Claim narrative).

[893] Exhibit A, Test Claim, filed January 31, 2011, page 55 (Test Claim narrative).

[894] The claimants also argue that a number of the requirements in Sections XII.C.I, XII.D.I, XII.E.I, XII.E.4, XII.F, and XII.G.I are not triggered by a municipal decision to build, but rather are general guidance and planning requirements triggered by the test claim permit and apply even if a permittee did not build any municipal projects, and are therefore mandated by the state. (Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 22-23.) The regulatory activities imposed by these sections are addressed in the next section. This section pertains solely to the separate issue of activities performed by the permittees in their capacity as municipal development project proponents, and is consistent with the Commission's past Stormwater Decisions (California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009, 09-TC-03, https://www.csm.ca.gov/matters/09-TC-03.shtml (accessed on March 4, 2024); California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.;

As explained below, the activities pertaining to municipal development projects *proposed by the permittees* stem from a discretionary decision by local government to construct, expand, and improve municipal projects, including roads. Thus, the Commission finds that the requirements contained in Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit, with respect to new development and significant redevelopment projects proposed by the permittees, are not mandated by the state.[895]

The courts have explained that even though a test claim statute or executive order may contain new requirements, the determination of whether those requirements are mandated by the state depends on whether the claimant's participation in the underlying program is voluntary or compelled.[896] When local government elects to participate in the underlying program, then reimbursement under article XIII B, section 6 is not required.[897]

Thus, the issue is whether the underlying decision of the claimants to develop or redevelop municipal projects is mandated by the state or constitutes a discretionary decision of local government. Activities undertaken at the option or discretion of local government, without legal or practical compulsion, do not trigger a state-mandated program within the meaning or article XIII B, section 6.[898]

The courts have identified two distinct theories for determining whether a program is compelled, or mandated by the state: legal compulsion and practical compulsion.[899] In the recent case of *Coast Community College Dist. v. Commission on State Mandates*

G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009, 10-TC-11, https://www.csm.ca.gov/matters/10-TC-11.shtml (accessed on March 4, 2024); and California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, 11-TC-03, https://www.csm.ca.gov/matters/11-TC-03.shtml (accessed on March 4, 2024).

[895] To the extent that the claimants contend any additional activities contained in the pled sections of Section XII of the test claim permit pertain to municipal development projects, the Commission's finding that those activities are not mandated by the state equally applies.

[896] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 731.

[897] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

[898] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73-76; *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates* (POBRA) (2009) 170 Cal.App.4th 1355, 1365-1366.

[899] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807, 815.

(2022) 13 Cal.5th 800, 815, the California Supreme Court reiterated the legal standards applicable to these two theories of mandate:

> Legal compulsion occurs when a statute or executive action uses mandatory language that require[s] or command[s] a local entity to participate in a program or service… Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power.
>
> Thus, as a general matter, a local entity's voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions.[900]
>
> * * *
>
> "[P]ractical compulsion," [is] a theory of mandate that arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.[901]

Thus, in the absence of legal compulsion, the courts have acknowledged the possibility that a state mandate can be found if local government can show that it faces "certain and severe penalties, such as double taxation or other draconian consequences," leaving local government no choice but to comply with the conditions established by the state.[902]

Here, all costs incurred by a municipality as a project proponent under the provisions of the test claim permit can be analogized to *City of Merced v. State* (1984) 153 Cal.App.3d 777 and *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727. In *City of Merced*, the statute at issue required a local government, when exercising the power of eminent domain, to compensate a business owner for the loss of business goodwill, as part of compensating for the property subject to the taking.[903] The court found that nothing *required* the local entity to exercise the power of eminent domain, and thus any costs

---

[900] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815 (internal quotation marks and citations omitted).

[901] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[902] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816-817.

[903] *City of Merced v. State* (1984) 153 Cal.App.3d 777, 782.

experienced as a result of the requirement to compensate for business goodwill was the result of an initial discretionary act.[904]

In *Kern*, the statute at issue required certain local school committees to comply with notice and agenda requirements in conducting their public meetings.[905] There, the court rejected the claimants' assertion that they had been legally compelled to incur notice and agenda costs, and hence were entitled to reimbursement from the state, based merely upon the circumstance that the notice and agenda provisions were mandatory elements of education-related programs in which the claimants participated, without regard to whether participation in the underlying program was voluntary or compelled.[906] The Court held that the underlying school site councils and advisory committees were part of several separate voluntary grant-funded programs, and therefore any notice and agenda costs were an incidental impact of participating or continuing to participate in those programs.[907] The Court acknowledged that the district was already participating in the underlying programs, and "as a practical matter, they feel they must participate in the programs, accept program funds, and…incur expenses necessary to comply with the procedural conditions imposed on program participants."[908] However, the Court held that "[c]ontrary to the situation that we described in *City of Sacramento* [*v. State* (1990)] 50 Cal.3d 51, a claimant that elects to discontinue participation in one of the programs here at issue does not face 'certain and severe…penalties' such as 'double…taxation' or other 'draconian' consequences, but simply must adjust to the withdrawal of grant money along with the lifting of program obligations."[909]

---

[904] *City of Merced v. State* (1984) 153 Cal.App.3d 777, 783.

[905] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 732.

[906] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 731.

[907] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 744-745.

[908] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 753.

[909] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 754 (citing *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74 [The "certain and severe…penalties" and "double…taxation" referred to the situation in *City of Sacramento* in which the state was compelled, by the potential loss of *both* federal tax credits *and* subsidies provided to businesses statewide, to impose mandatory unemployment insurance coverage on public agencies consistent with a change in federal law.]).

The claimants specifically dispute the application of *City of Merced* and *Kern High School Dist.*, stating that the test claim permit is not a voluntary program.[910] They argue that since issuing the *Kern High School Dist*. decision, the California Supreme Court has rejected the application of *City of Merced* in circumstances beyond those strictly present in *Kern High School Dist.*[911] The claimants cite *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888, in which the Court stated "there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement…whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."[912]

The claimants misinterpret *San Diego Unified*, and place too much emphasis on dicta. In *San Diego Unified*, the court discussed the example of *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, in which an executive order requiring that county firefighters be provided with protective clothing and safety equipment was held to impose a reimbursable state mandate for the costs of the clothing and equipment.[913] The *San Diego Unified* court reasoned that under a strict application of the rule of *City of Merced* "such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc."[914] However, the Court did not decide *San Diego Unified* on that ground, finding instead that hearing costs incurred relating to so-called discretionary expulsion proceedings under the Education Code were adopted to implement a federal due process mandate, and were, in context, de minimis, and therefore nonreimbursable.[915] Therefore the language cited by the claimants is merely dicta, and the case does not reach a *conclusion* with respect to the prospective application of the *City of Merced* and *Kern* rules.

After these cases, the Third District Court of Appeal decided *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, which addressed the Peace Officers Procedural Bill of Rights Act (POBRA) that imposed

---

[910] Exhibit A, Test Claim, filed January 31, 2011, page 55; Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 24.

[911] Exhibit A, Test Claim, filed January 31, 2011, pages 55-56.

[912] Exhibit A, Test Claim, filed January 31, 2011, page 56 (citing *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888).

[913] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521.

[914] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

[915] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888 ("As we shall explain, we conclude, regarding the reimbursement claim that we face presently, that all hearing procedures set forth in Education Code section 48918 properly should be considered to have been adopted to implement a federal due process mandate, and hence that all such hearing costs are nonreimbursable under article XIII B, section 6…").

requirements on all law enforcement agencies. The court held that the POBRA legislation did not constitute a state-mandated program on school districts because school districts are authorized, but not required, by state law to hire peace officers, and thus there was no legal compulsion to comply with POBRA.[916] In considering whether the districts were practically compelled to hire peace officers, the court found that it was "not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply."[917] The court emphasized that practical compulsion requires a *concrete* showing that a failure to engage in the activities at issue will result in certain and severe penalties or other draconian consequences, leaving the districts no choice but to comply.[918] Thus, the court denied reimbursement for school districts to comply with the POBRA statutes.

In *Coast Community College Dist.* (2022)*,* the Supreme Court reaffirmed the viability of practical compulsion as a theory of state mandate when it specifically directed the Court of Appeal to consider on remand whether community college districts were practically compelled to comply with the funding entitlement regulations at issue.[919] The Commission had denied reimbursement, finding that the regulations were not mandated by the state, and the trial court agreed. However, the Court of Appeal concluded that the districts were legally compelled to comply with the regulations on the basis that they applied to the districts' underlying core functions, which state law compelled the districts to perform.[920] The Supreme Court reversed, holding that the standards set forth in the

---

[916] *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, 1368.

[917] *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, 1367.

[918] *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, 1367 ("The Commission submits that this case should be distinguished from *City of Merced* and *Kern High School Dist.* because the districts "employ peace officers when necessary to carry out the essential obligations and functions established by law." However, the "necessity" that is required is facing " 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences."…That cannot be established in this case without a *concrete showing* that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences"). Emphasis added.

[919] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 822 ("Having now rejected the Court of Appeal's conclusion regarding legal compulsion, we find it 'appropriate to remand for the [court] to resolve ... in the first instance' whether the districts may be entitled to reimbursement under a theory of nonlegal compulsion").

[920] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

regulations were insufficient to legally compel the districts to adopt them.[921] The court explained that because the districts were not legally required to adopt the standards described in the regulations, and instead faced the risk of "potentially severe financial consequences" if they elected not to do so, legal compulsion was inapplicable. The court characterized the appellate court's ruling as premised upon a determination that the districts had no "true choice" but to comply with the regulations at issue, which the court explained "sound in *practical*, rather than *legal*, compulsion."[922] In drawing this distinction and remanding the case to the Court of Appeal to consider in the first instance whether the districts established practical compulsion, the court relied upon *City of Sacramento* for the proposition that practical compulsion exists where "[t]he alternatives were so far beyond the realm of practical reality that they left the state "without discretion" to depart from federal standards."[923]

In *City of Sacramento v. State of California* (1990), the Supreme Court addressed practical compulsion in the context of a 1976 federal law requiring states, for the first time, to provide unemployment insurance to public employees, characterized as employing "a 'carrot and stick' to induce state compliance."[924] The state could comply with federal law and obtain a federal tax credit and administrative subsidy — a carrot — or not comply and allow its businesses to face double unemployment taxation by both state and federal governments — a stick.[925] California passed a law conforming to the requirements of the federal law. The City of Sacramento and the County of Los Angeles challenged the state law asserting that it was a reimbursable state mandate.[926] The state opposed the request for reimbursement on the ground that the legislation imposed a federal mandate and, thus, reimbursement was not required.[927] The state argued that strict legal compulsion was not required to find a federal mandate and that California's failure to comply with the federal "carrot and stick" scheme was so substantial that the state had no realistic discretion to refuse.[928] The court agreed and found that the immediate and automatic penalty of double taxation for not complying with the federal law was "draconian," that "the state simply did what was necessary to avoid certain and severe federal penalties upon its resident businesses," and that "[t]he alternatives were "so far beyond the realm of practical reality[,] that they left the state

---

[921] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807.

[922] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807, emphasis in original.

[923] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807 (internal quotations omitted).

[924] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58, 72.

[925] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74.

[926] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58.

[927] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 65-66, 71.

[928] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58, 71.

'without discretion' to depart from federal standards."[929] The court concluded that the state acted in response to a federal mandate for purposes of article XIII B, section 6, and reimbursement was not required. The court further explained that the practical compulsion determination "must depend on such factors as the nature and purpose of the…program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal."[930]

Therefore, based on *Kern High School Dist.*, *POBRA*, and *Coast Community College Dist.*, where statutory or regulatory requirements result from an apparently or facially *discretionary* decision, and are therefore not *legally* compelled, they may still be *practically* compelled if the failure to act would subject the claimant to "certain and severe…penalties" such as "double…taxation" or other "draconian" consequences, such as those identified in the *City of Sacramento* case, leaving local government no choice but to comply with the conditions established by the state.[931] Substantial evidence in the record is required to make a finding of practical compulsion.[932]

The claimants argue that, unlike *City of Mered and Kern High School Dist.*, the local agencies here did not "choose" to build public projects; they either had to build municipal projects to fulfill their civic obligations or face "certain and severe penalties or consequences for not providing necessary public services – they were practically compelled.[933] According to the claimants, when a local government undertakes a municipal new development or significant redevelopment project, it is not "optional," but rather "because they must build that project in the public interest" and that constructing "essential infrastructure is the only reasonable means" to carry out their core, mandatory government functions.[934] Municipal projects are "integral to the permittees' function as municipal entities," and the "failure to repair, upgrade or extend such facilities can pose a threat to public health and safety, and expose the permittees to liability."[935] Furthermore, "[l]ocal governments do not have the same ability as a private developer to adjust the size of a project so as to avoid the LID and hydromodification

---

[929] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58, 74.

[930] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 58, 76.

[931] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 754 (citing *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74).

[932] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1368-1369 (*POBRA*); Government Code section 17559; California Code of Regulations, title 2, section 1187.5.

[933] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 24.

[934] Exhibit A, Test Claim, filed January 31, 2011, page 55; Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 23, 25.

[935] Exhibit A, Test Claim, filed January 31, 2011, page 55.

requirements, since the size of the project must reflect civic requirements and needs."[936]

The claimants rely on *Department of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355 for the proposition that practical compulsion depends on whether an action is the only reasonable means to carry out the local agency's core mandatory functions.[937] The claimants argue that constructing "essential infrastructure" is the only reasonable means to carry out their core mandatory functions.[938] The claimants liken the practical compulsion to build municipal development projects to *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558, where the court found that the municipalities there were practically compelled to obtain an NPDES permit and fulfill the permit's conditions.[939]

The claimants' position is not supported by the law or any evidence in the record. First, the requirements detailed in the test claim permit do not apply to maintenance activities based on the plain language of the order and, thus, the repair of the facilities is not at issue. Section XII.D.2.a defines significant redevelopment projects triggering the planning activities as those that include the *addition or replacement* of 5,000 square feet or more of impervious surface on a developed site.[940]

Second, the claimants' argue that undertaking a municipal new development or significant redevelopment project is mandatory and not based on discretionary decisions because "they must build that project in the public interest."[941] In addition, the claimants focus on the size of the construction project, contending that they have no option to adjust the size to avoid compliance with new development and significant redevelopment project requirements because they must build the project in the public

[936] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 23.

[937] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 24.

[938] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 25.

[939] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 24.

[940] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.2.a).

[941] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 23.

interest.[942] However, there is nothing in state law that imposes a legal obligation on local agencies to construct, expand, or improve municipal projects, including roads.[943]

Third, the claimants argue that because the municipal projects served by structural post-construction BMPs were already constructed, the requirement to inspect and devise a schedule for *completed* municipal projects are not triggered by any discretionary act by the permittees, but are required by the test claim permit.[944] However, the courts have held that when local government elects to participate in the underlying program, reimbursement under article XIII B, section 6 is not required for any requirements imposed by the state on that program, *regardless* of when the initial decision to participate in the program began.[945] This was true in *Kern High School Dist.*, where school districts made the discretionary decision to create school site councils as authorized under the law to do, well before the state imposed additional notice and agenda requirements on those programs.[946]

---

[942] Exhibit A, Test Claim, filed January 31, 2011, page 55; Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 23.

[943] For example, see Government Code section 23004 (counties may purchase, receive by gift or bequest, and hold land within its limits, or elsewhere when permitted by law; and manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require); Government Code sections 37350-37353 (cities may purchase, lease, receive, hold, and enjoy real and personal property, and control and dispose of it for the common benefit; may erect and maintain buildings for municipal purposes; and may acquire property for parking motor vehicles, and for opening and laying out any street; Government Code section 37111 ("When the legislative body deems it necessary that land purchased for park or other purposes be used for construction of public buildings or creation of a civic center, it may adopt an ordinance by a four-fifths vote declaring the necessity and providing for such use"); Streets and Highways Code section 1800 ("The legislative body of any city may do any and all things necessary to lay out, acquire, and construct any section or portion of any street or highway within its jurisdiction as a freeway, and to make any existing street or highway a freeway."); and Streets and Highways Code section 1801 ("The legislative body of any city may close any street or highway within its jurisdiction at or near the point of its intersection with any freeway, or may make provision for carrying such street or highway over, under, or to a connection with the freeway, and may do any and all necessary work on such street or highway").

[944] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 26.

[945] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 731, 743.

[946] *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, 732, 753.

Moreover, the claimants assert that they are compelled to develop and redevelop municipal projects to fulfil their core mandatory governmental functions.[947] However, the Supreme Court in *Coast Community College Dist.* rejected the lower court's holding of legal compulsion on the basis of the local entity's core functions.[948]

Therefore, there is no law supporting a finding of legal compulsion, nor any evidence in the record that local agencies are practically compelled to develop or redevelop municipal projects, and that a failure to do so would subject them to "certain and severe…penalties" such as "double…taxation" or other "draconian" consequences, such as the immediate "draconian" penalty of double taxation in the *City of Sacramento* case.[949] The Commission's regulations require that all written representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief.[950]

Accordingly, because the decision to construct a municipal new development or significant redevelopment project is solely within the discretion of the claimants and is not mandated by the state, the activities contained in XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 of the test claim permit relating to the permittees' municipal new development and significant redevelopment projects are not mandated by the state.[951]

Finally, the claimants' reliance on *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, where the court rejected the state's argument that local government can choose to obtain an NPDES permit to discharge pollutants, is

---

[947] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 25.

[948] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 807 ("Contrary to the Court of Appeal's interpretation, the fact that the standards set forth in the regulations relate to the districts' core functions (matriculation, hiring of faculty and selecting curriculum, etc.) does not in itself establish that the districts have a mandatory legal obligation to adopt those standards."), and 816 (""[P]ractical compulsion," [is] a theory of mandate that arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.").

[949] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1368 (*POBRA*); *Department of Finance v. Commission on State Mandates* (*Kern)* (2003) 30 Cal.4th 727, 754 (citing *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74).

[950] California Code of Regulations, title 2, sections 1183.1(e), 1187.5(b).

[951] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

misplaced.[952] The voluntary act on the part of the claimants is not that they chose to obtain an NPDES permit to discharge stormwater, but rather, that they chose to build municipal new development or significant redevelopment projects.

Therefore, the Commission finds that the requirements of the test claim permit, in Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, XII.G.1, and XII.K.5 listed above, as applied to the permittees in their capacity as municipal new development and significant redevelopment project proponents, are not mandated by the state.

b. The requirements imposed on the permittees to comply with Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 of the test claim permit, as a proponent of a municipal new development or significant development project, are not unique to government, do not provide a peculiarly governmental service to the public, and therefore do not impose a new program or higher level of service.

As indicated above, Section XII.A.5 applies to replacement and construction of culverts and bridge crossings, which could be present on both the permittees' own development projects and development projects other than those proposed by the permittees. Sections XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, and XII.E.9 impose LID and hydromodification management requirements on all new development and significant redevelopment projects, including permittee development projects; Section XII.F.2 renders all new development and significant redevelopment road projects, including permittee road projects, subject to standard design and post-development BMP guidance as part of the project review and approval process; and Section XII.G.1 requires project proponents to complete a feasibility analysis based on approved criteria in order to be considered for alternatives to and in-lieu of the LID and hydromodification management requirements imposed by the test claim permit.[953] "New development and significant redevelopment projects" are defined in Section XII.D.2 of the test claim permit, include both public and private projects, and are deemed "significant" based on the size of the project.[954]

These requirements do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[955] Here, the new

---

[952] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 24.

[953] Exhibit A, Test Claim, filed January 31, 2011, pages 211 (test claim permit, Section XII.C.1), 213 (test claim permit, Section XII.D.1), 217-219 (test claim permit, Section XII.E.1 through E.4), 220-221 (test claim permit, Section XII.E.9), 222 (test claim permit, Section XII.G.1).

[954] Exhibit A, Test Claim, filed January 31, 2011, pages 213-214 (test claim permit).

[955] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

requirements imposed on new development and significant redevelopment apply to both public and private project proponents, are not unique to government, and do not provide a governmental service to the public.

The California Supreme Court explained in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, that "the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities."[956] In *City of Sacramento*, the court followed *County of Los Angeles*, holding that "[b]y requiring local governments to provide unemployment compensation protection to their own employees, the state has not compelled provision of new or increased 'service to the public' at the local level…[nor] imposed a state policy 'uniquely' on local governments."[957] Rather, the court observed that most employers were already required to provide unemployment protection to their employers, and "[e]xtension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'"[958]

Here, the requirements required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 of the test claim permit are applicable to all new and significant development projects and are not uniquely imposed on government. Many of the categories of "development projects" in the test claim permit, especially automotive repair shops, restaurants, and gas stations, contemplate a private person or entity as the project proponent, rather than a municipal entity. The requirements are triggered based on the size and impact of a development project, not whether its proponent is a private or government entity.[959] In this respect, the requirements of the test claim permit are not unique to government but apply only *incidentally* to the co-permittees when they are the proponent of a project that meets the criteria of a priority development project. This is no different from the situation addressed in the *County of Los Angeles* and *City of Sacramento* cases; in each of those cases the alleged mandate applied to the local government as an employer, and applied in substantially the same manner as to all other employers, and for that reason the law at issue was not

---

[956] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

[957] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67.

[958] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67. See also, *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190 (Finding that statute eliminating local government exemption from liability for worker's compensation death benefits for public safety employees "simply puts local government employers on the same footing as all other nonexempt employers").

[959] Exhibit A, Test Claim, filed January 31, 2011, pages 213-214 (test claim permit).

considered a peculiarly governmental "program" uniquely imposed on local government within the meaning of article XIII B.[960]

Moreover, the requirements in Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 do not provide a peculiarly governmental service to the public and, in this respect, they are distinguishable from the requirements in *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 558, where the court found that the installation and maintenance of trash receptacles at transit stops carried out the governmental function of providing a service to the public by reducing pollution entering stormwater drainage systems and receiving waters. There, the requirement to install and maintain trash receptacles was imposed uniquely on the government permittees, and the court found that trash collection is itself a governmental function that provides a service to the public.[961] Here, on the other hand, the implementation of the requirements on *all* developers is not uniquely governmental, is triggered by the developer's decision to build and, thus, does not provide a peculiarly governmental service to the public. "[T]he intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities."[962]

Accordingly, the requirements imposed on the permittees to comply with Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1, XII.E.2, XII.E.3, XII.E.4, XII.E.9, XII.F.2, and XII.G.1 of the test claim permit, as a project proponent of a municipal new development or significant redevelopment project, do not impose a new program or higher level of service.

c. Although the activities required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5, that pertain to the claimants' *regulation* of development projects other than those proposed by the permittees, may impose a state-mandated new program or higher level of service, they do not result in costs mandated by the state as described in Section IV.C of this Decision.

As discussed above, Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 contain the following requirements that relate to the permittees' regulation of development projects other than those proposed by the permittees:

---

[960] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67, citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58.

[961] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 558-559.

[962] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

- Ensure that appropriate BMPs to reduce erosion and mitigate hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP;[963]
- Review, and amend each permittee's general plan and related documents (e.g., development standards, zoning codes, conditions of approval) to eliminate barriers to implementation of LID principles and hydrologic conditions of concern, and reflect any changes to the project approval process or procedures in the LIP;[964]
- Submit a revised WQMP to incorporate the new elements required in the test claim permit;[965]
- Perform the following low impact development (LID) and hydromodification management activities:
    - Update and implement the WQMP to address LID principles and hydrologic conditions of concern;[966]
    - Require development projects to infiltrate, harvest and use, evapotranspire, and/or bio-treat the 85th percentile storm event; however, to the extent that entire volume cannot be captured, treat and discharge that portion of the volume in compliance with permit requirements;[967]
    - Incorporate LID site design principles into the revised WQMP, and require development projects to include site design BMPs during the development of the project-specific WQMP;[968]
    - Revise ordinances, codes, building and landscape design standards to promote LID techniques;[969]

---

[963] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.5).

[964] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.C.1).

[965] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1).

[966] Exhibit A, Test Claim, filed January 31, 2011, pages 217 (test claim permit, Section XII.E.1).

[967] Exhibit A, Test Claim, filed January 31, 2011, pages 217 (test claim permit, Section XII.E.2).

[968] Exhibit A, Test Claim, filed January 31, 2011, pages 217-218 (test claim permit, Section XII.E.3).

[969] Exhibit A, Test Claim, filed January 31, 2011, pages 218-219 (test claim permit, Section XII.E.4).

- Implement education programs to educate property owners of new development or significant redevelopment projects to use pollution prevention BMPs and to maintain on-site hydrologically functional landscape controls;[970]
- Specify in the revised WQMP the preferential use of site design BMPs that incorporate LID techniques, where feasible, and prioritize the mitigation of structural site design BMPs;[971]
- Continue to ensure through the WQMP review and approval process that development projects do not pose a hydrologic condition of concern, and if a hydrologic condition of concern exists, evaluate whether adverse impacts are likely to occur and if so, require the project proponent to implement additional BMPs to mitigate the impacts;[972]

- Develop standard design and post-development BMP guidance to be incorporated into projects for streets, roads, highways, and freeway improvements, under the jurisdiction of the co-permittees to reduce the discharge of pollutants from the projects to the MEP, and submit the draft guidance to the executive officer for review and approval;[973]
- Implement the approved standard design and post-development BMP guidance for all road projects;[974]
- Develop criteria for project evaluation to determine the feasibility of implementing LID BMPs;[975]
- Maintain a database to track the operation and maintenance of structural post-construction BMPs installed after adoption of the test claim permit;[976] and
- Develop an inspection frequency for new development and significant redevelopment projects, based on the project type and the type of structural post

[970] Exhibit A, Test Claim, filed January 31, 2011, page 219 (test claim permit, Section XII.E.6).

[971] Exhibit A, Test Claim, filed January 31, 2011, pages 219-220 (test claim permit, Sections XII.E.7 and XII.E.8).

[972] Exhibit A, Test Claim, filed January 31, 2011, pages 220-221 (test claim permit, Section XII.E.9).

[973] Exhibit A, Test Claim, filed January 31, 2011, pages 221-222 (test claim permit, Section XII.F.1).

[974] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.F.2).

[975] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.G.1).

[976] Exhibit A, Test Claim, filed January 31, 2011, page 225 (test claim permit, Section XII.K.4).

construction BMPs deployed. In addition, structural post construction BMPs for all new development and significant redevelopment projects shall be inspected within the five-year permit term. The co-permittees shall ensure that the BMPs are operating and are maintained properly and all BMPs are working effectively to remove pollutants in runoff from the site. All inspections shall be documented and kept as permittee record.[977]

Even though the regulatory activities required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 may be mandated by the state and impose a new program higher level of service, these activities do not result in costs mandated by the state. As described in Section IV.C of this Decision, the claimants have fee authority sufficient as a matter of law to pay for these regulatory activities and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(d).[978]

7. The Requirements in Section XII.B of the Test Claim Permit, to Develop and Implement a Watershed Action Plan, Impose a State-Mandated New Program or Higher Level of Service.

The claimants have pled Section XII.B of the test claim permit, which requires the permittees to develop and implement a Watershed Action Plan.[979] The test claim permit defines a Watershed Action Plan as follows:

> Integrated plans for managing a watershed that include consideration of water quality, Hydromodification, water supply and habitat protection. The Watershed Action Plan integrates existing watershed based planning efforts and incorporates watershed tools to manage cumulative impacts of development on vulnerable streams, preserve structure and function of streams, and protect source, surface and groundwater quality and water supply in the Permit Area. The Watershed Action Plan should integrate Hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction.[980]

---

[977] Exhibit A, Test Claim, filed January 31, 2011, pages 225-226 (test claim permit, Section XII.K.5).

[978] See for example, *County of San Diego v. Commission on State Mandates* (2023) 91 Ca.App.5th 625, 628, "Given our determination that the Test Claim Statutes change the penalties for crimes, and thus fall within the statutory exception to the mandatory reimbursement requirement [in Government Code section 17556], it is unnecessary for us to decide whether the Test Claim Statutes impose a mandate on counties to carry out a new program or a higher level of service."

[979] Exhibit A, Test Claim, filed January 31, 2011, pages 46, 47-49, 57, 58 (Test Claim narrative), 209-211 (test claim permit, Section XII.B).

[980] Exhibit A, Test Claim, filed January 31, 2011, page 294 (test claim permit, Appendix 4 [Glossary]).

The Regional Board describes the Watershed Action Plan as "addressing all stressors within a hydrologically-defined drainage basin as opposed to addressing individual pollutant sources on a discharge-by-discharge basis."[981]

Sections XII.B.1, XII.B.2, and XII.B.3 require the permittees to develop and submit for executive officer approval a Watershed Action Plan and implementation tools that address the entire permit area, address the impacts of urbanization in a holistic manner, and describe and implement the permittees' approach to coordinated watershed management.[982] Section XII.B.3 further specifies that the Watershed Action Plan must include a description of proposed regional BMP approaches to address urban Total Maximum Daily Load (TMDL) waste load allocations (WLAs); recommendations for specific retrofit studies of the MS4, parks and recreational areas "that incorporate opportunities for addressing TMDL Implementation Plans, Hydromodification from Urban Runoff and LID implementation," and a description of regional efforts to benefit water quality and their role in the Watershed Action Plan, including how these efforts connect to the permittees' own urban runoff programs and identification of any further coordination that should be promoted "to address Urban WLA or Hydromodification from Urban Runoff to the MEP."[983]

Section XII.B.4 requires the permittees to delineate existing unarmored or soft-armored stream channels that are vulnerable to hydromodification from new development and significant redevelopment projects.[984] The test claim permit's findings describe this requirement as requiring the permittees "to expand upon the existing maps to include a map of its lined and unlined channels and streams within the Permit Area with the goal of identifying, prioritizing, and developing specific action plans for protecting those segments of streams that are vulnerable to development impacts."[985]

Section XII.B.5 then requires the permittees, within two years of completing the channel delineation, to develop and implement a hydromodification management plan (HMP) that evaluates the impacts of hydromodification on drainage channels deemed most susceptible to degradation.[986] The HMP must describe how the delineation will be used to manage hydromodification on a per project, sub-watershed, and watershed

---

[981] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 33.

[982] Exhibit A, Test Claim, filed January 31, 2011, pages 209-210 (test claim permit, Sections XII.B.1 through B.3).

[983] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.3).

[984] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.4).

[985] Exhibit A, Test Claim, filed January 31, 2011, page 154 (test claim permit, Section II.G.10).

[986] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.5).

basis; prioritize actions "based on drainage feature/susceptibility/risk assessments and opportunities for restoration;" identify the potential causes of degradation of identified streams; identify sites to be monitored; include an assessment methodology; and require follow-up actions based on monitoring results.[987]

Section XII.B.6 requires the permittees, as part of the Watershed Action Plan, to identify waterbodies listed as impaired under Section 303(d) of the CWA with identified urban runoff pollutant sources causing impairment; to identify existing monitoring programs addressing those pollutants, and to identify BMPs that the permittees propose to or currently implement in accordance with the requirements of the test claim permit.[988] Section XII.B.6 also requires the permittees, upon completing the channel delineation described in Section XII.B.4, to develop a schedule to implement a web-based regional geodatabase of the impaired waters, MS4 facilities, critical habitat preserves, and stream channels that are vulnerable to hydromodification (also referred to as the watershed geodatabase).[989] Section XII.B.7 then requires the permittees to develop a schedule to maintain the watershed geodatabase and other documents associated with the Watershed Action Plan.[990]

Section XII.B.8 requires the permittees, within three years of adoption of the test claim permit, to submit the Watershed Action Plan for approval and incorporation into the Drainage Area Management Plan (DAMP). Section XII.B.8 also requires each permittee, within six months of approval of the Watershed Action Plan, to implement the applicable provisions in the approved revised DAMP, and to incorporate the applicable DAMP provisions into their LIPs.[991]

Section XII.B.9 requires the permittees to incorporate training on the Watershed Action Plan into their training programs and to provide outreach and education to the development community on the web-based components of the Watershed Action Plan, such as the watershed geodatabase.[992] Section XII.B.10 requires the permittees to

---

[987] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.5).

[988] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.6).

[989] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.6).

[990] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.7).

[991] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.8).

[992] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.9).

invite participation and comments from interested parties on the development and use of the watershed geodatabase.[993]

a. Section XII.B imposes new requirements on the permittees to develop and implement a Watershed Action Plan.

The test claim permit explains that the requirements to develop and implement a Watershed Action Plan are new and resulted from an audit of the permittees' urban runoff management programs during the prior permit term, which showed "no clear nexus between the watershed protection principles, including LID techniques specified in the WQMP and the Permittees' General Plan or related documents."[994] As indicated in the test claim permit's findings:

> This Order further requires the Permittees to develop a Watershed Action Plan that would address TMDL Implementation Plan BMP strategies and provide regional tools to address Hydromodification…The Watershed Action Plan integrates existing watershed based planning efforts and incorporates watershed tools to manage cumulative impacts of development on vulnerable streams, preserve structure and function of streams, and protect source, surface and groundwater quality and water supply in the permitted area. The Watershed Action Plan should integrate Hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction.[995]

The Regional Board does not dispute that Section XII.B imposes new requirements on the permittees, instead pointing to the following section of the Fact Sheet as offering a rationale for the requirement to develop a Watershed Action Plan:[996]

> The USEPA has recommended a shift to watershed-based NPDES permitting and watershed approach to CWA programs, including NPDES programs. The Permittees and the Regional Board also recognize that a watershed-based approach is expected to be effective in controlling Pollutants in Urban Runoff. Consistent with this approach, this Order requires the Permittees to develop and implement programs that integrate Hydromodification and water quality management strategies with land use planning policies, ordinances, and plans within each jurisdiction. A watershed approach considers the diverse Pollutant sources and

[993] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.10).

[994] Exhibit A, Test Claim, filed January 31, 2011, page 154 (test claim permit, Section II.G.7).

[995] Exhibit A, Test Claim, filed January 31, 2011, page 155 (test claim permit, Section II.G.11).

[996] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 34.

> stressors and watershed goals within a defined geographic area (i.e., watershed boundaries).[997]

The requirements in Section XII.B, pertaining to the development and implementation of a Watershed Action Plan are new. Federal regulations require that NPDES permits include an urban runoff management program which must address management practices; control techniques; system, design, and engineering methods to reduce the discharge of pollutants to the MEP, and which may impose controls on a systemwide, watershed, jurisdiction, or individual outfall basis.[998] Thus, while federal law requires a stormwater management program, there is no requirement under federal law that the components of that program be imposed on a watershed basis, as they are here.

Furthermore, the prior permit did not require the permittees to develop and implement a Watershed Action Plan. Under the prior permit, the Drainage Area Management Plan (DAMP) served as the primary programmatic document for managing urban runoff for the permittees, and the permittees used the DAMP to develop their own individual ordinances, plans, policies, and procedures to manage urban runoff.[999] The co-permittees were responsible for managing the urban runoff programs within their own jurisdictions and for implementing "management programs, monitoring and reporting programs, all BMPs listed in the DAMP, and related plans as required by this Order and tak[ing] such other actions as may be necessary to meet the MEP standard."[1000] Thus, while the prior permit required the permittees to implement the urban runoff management program within their own jurisdictions, it did *not* require them to do so by developing and implementing a Watershed Action Plan or any other type of watershed-based urban runoff management program.

Therefore, Section XII.B of the test claim permit imposes new requirements on the permittees to develop and implement a Watershed Action Plan, as follows:

> 1. Within three years of adoption of the test claim permit, the permittees shall develop and submit to the Executive Officer for approval a Watershed Action Plan and implementation tools that describes and implements the permittees' approach to coordinated watershed management (Sections XII.B.1, 2, and 3).[1001] At a minimum, the Watershed Action Plan shall include the following:

---

[997] Exhibit A, Test Claim, filed January 31, 2011, page 331 (test claim permit, Appendix 6 [Fact Sheet]).

[998] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[999] Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]); Exhibit N (15), Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 3.

[1000] Exhibit A, Test Claim, filed January 31, 2011, pages 377-378 (Order No. R8-2002-0011, Section I(B)(1)).

[1001] Exhibit A, Test Claim, filed January 31, 2011, pages 209-210 (test claim permit, Sections XII.B.1 through B.3).

a. Description of proposed regional BMP approaches that will be used to address urban TMDL WLAs.

b. Development of recommendations for specific retrofit studies of MS4, parks and recreational areas that incorporate opportunities for addressing TMDL implementation plans, hydromodification from urban runoff and LID implementation.

c. Description of regional efforts that benefit water quality (e.g. Western Riverside County Multiple Species Habitat Conservation Plan, TMDL Task Forces, Water Conservation Task Forces, Integrated Regional Watershed Management Plans) and their role in the Watershed Action Plan. The permittees shall describe how these efforts link to their urban runoff programs and identify any further coordination that should be promoted to address urban WLA or hydromodification from urban runoff to the MEP (Section XII.B.3).[1002]

2. Within two years of adoption of the test claim permit, the permittees shall delineate existing unarmored or soft-armored stream channels in the permit area that are vulnerable to hydromodification from new development and significant redevelopment projects (Section XII.B.4).[1003]

3. Within two years of completion of the channel delineation in Section XII.B.4 of the test claim permit, develop a Hydromodification Management Plan (HMP) describing how the delineation will be used on a per project, sub-watershed, and watershed basis to manage Hydromodification caused by urban runoff. The HMP shall prioritize actions based on drainage feature/susceptibility/risk assessments and opportunities for restoration.

a. The HMP shall identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis.

b. Develop and implement a HMP to evaluate Hydromodification impacts for the drainage channels deemed most susceptible to degradation. The HMP will identify sites to be monitored, include an assessment methodology, and required follow-up actions based on monitoring results. Where applicable, monitoring sites may be used to evaluate the effectiveness of BMPs in preventing or reducing impacts from Hydromodification (Section XII.B.5).[1004]

[1002] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.3).

[1003] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.4).

[1004] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.5).

4. Identify impaired waters [CWA § 303(d) listed] with identified urban runoff pollutant sources causing impairment, existing monitoring programs addressing those pollutants, any BMPs that the permittees are currently implementing, and any BMPs the permittees are proposing to implement consistent with the other requirements of this Order. Upon completion of the channel delineation, develop a schedule to implement an integrated, world-wide-web available, regional geodatabase of the impaired waters, MS4 facilities, critical habitat preserves defined in the Multiple Species Habitat Conservation Plan and stream channels in the permit area that are vulnerable to hydromodification from urban runoff (Section XII.B.6).[1005]

5. Develop a schedule to maintain the watershed geodatabase and other available and relevant regulatory and technical documents associated with the Watershed Action Plan (Section XII.B.7).[1006]

6. Within three years of adoption of the test claim permit, the permittees shall submit the Watershed Action Plan to the Executive Officer for approval and incorporation into the Drainage Area Management Plan (DAMP). Within six months of approval, each permittee shall implement applicable provisions of the approved revised DAMP and incorporate applicable provisions of the revised DAMP into the LIPs for watershed wide coordination of the Watershed Action Plan (Section XII.B.8).[1007]

7. The permittees shall also incorporate Watershed Action Plan training, as appropriate, including training for upper-level managers and directors into the training programs described in Section XV of the test claim permit. The co-permittees shall also provide outreach and education to the development community regarding the availability and function of appropriate web-enabled components of the Watershed Action Plan (Section XII.B.9).[1008]

8. Invite participation and comments from resource conservation districts, water and utility agencies, state and federal agencies, non-governmental agencies and other interested parties in the development and use of the watershed geodatabase (Section XII.B.10).[1009]

[1005] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.6).

[1006] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.7).

[1007] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.8).

[1008] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.9).

[1009] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.B.10).

b. The new requirements imposed by Section XII.B mandate a new program or higher level of service.

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[1010]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[1011] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[1012]

Here, the Regional Board does not dispute that the Watershed Action Plan requirements are new, but rather argues that they are based on recommendations and guidance from U.S. EPA to address water quality problems through a watershed-based approach.[1013] The Regional Board also asserts that that federal regulations require the permittees to address new development and significant redevelopment projects through controls to reduce post-construction pollutants.[1014] Finally, the Regional Board argues "addressing water quality concerns is most efficiently and economically accomplished on a regional, watershed, or sub-watershed basis rather than on an individual project basis" and the activities comprising the Watershed Action Plan, such as mapping and identifying stream segments vulnerable to hydromodification and water quality

---

[1010] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[1011] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[1012] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[1013] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 35.

[1014] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 35-36, citing Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(2).

impairment, "is a logical and practical next step to address impacts caused by hydromodification."[1015]

The Commission finds that the new requirements imposed by Section XII.B. are mandated by the state.

Federal law requires that NPDES stormwater permits impose "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."[1016] As discussed above, federal regulations require that NPDES permits include an urban runoff management program, which imposes controls on a systemwide, watershed, jurisdiction, or individual outfall basis.[1017] Furthermore, federal regulations require those management program controls to include structural and source control measures to reduce pollutants from runoff from commercial and residential areas, including planning procedures for developing, implementing, and enforcing controls to reduce post-construction pollutants from new development and significant redevelopment projects.[1018]

However, there is nothing in federal law that is sufficiently specific as to require the new Watershed Action Plan activities. Federal law permits, but does not require, stormwater management programs to impose controls on a "systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls."[1019] Thus, there is no requirement under federal law to develop and implement a Watershed Action Plan.[1020] Nor is there evidence in the record showing that the Watershed Action Plan requirements are the only means by which the federal MEP standard can be met. Instead, the Regional Board exercised a true choice by determining that the Watershed Action Plan requirements are necessary to meet the MEP standard.

Additionally, the Commission finds that these state-mandated activities impose a new program or higher level of service. "New program or higher level of service" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[1021]

[1015] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 36.

[1016] United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[1017] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1018] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(2).

[1019] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1020] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, pages 21-23.

[1021] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 629-630.

Only one of these alternatives is required to establish a new program or higher level of service.[1022]

Here, the newly mandated Watershed Action Plan requirements are uniquely imposed on local government and are intended to more effectively manage the impacts of urbanization, including development, on water quality and stream stability throughout the permit area, through an integrated and coordinated watershed management approach.[1023] Therefore, the requirements are uniquely imposed on the local government permittees and provide a governmental service to the public.

Accordingly, Section XII.B of the test claim permit imposes a state-mandated new program or higher level of service on the claimants for the new activities identified above.

8. The Requirements in Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 of the Test Claim Permit, to Provide Formal Training to Permittee Staff Responsible for Reviewing and Approving Project-Specific Water Quality Management Plans (WQMPs), Including on the CEQA Requirements Contained in Section XII.C of the Test Claim Permit, Impose a State-Mandated New Program or Higher Level of Service.

The claimants allege that Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 of the test claim permit require them to develop and conduct formal training programs on Water Quality Management Program (WQMP) review and CEQA requirements.[1024] Due to inconsistencies in the pleadings, a full analysis of what is properly pled is necessary.

The Test Claim identifies "The mandates for which the claimants seek a subvention of state funds...which generally encompass the following: ...Requirements for training in WQMP review and CEQA requirements, contained in Section XV,"[1025] and quotes the following language from Sections XV.C and XV.F.1, XV.F.4, and XV.F.5:

> *C. Formal Training: [relevant portions] The formal training programs shall educate Permittee employees responsible for implementing requirements of this Order, by providing training on the following Permittee activities: ...WQMP review... Formal training may be conducted in classrooms or using videos, DVDs or other multimedia. The program shall consider all applicable Permittee staff such as storm water program managers, construction/industrial/ commercial/residential inspectors, planners, engineers, public works crew, etc. and shall: define the required knowledge and competencies for each Permittee Activity, outline the*

[1022] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

[1023] Exhibit A, Test Claim, filed January 31, 2011, page 209 (test claim permit, Section XII.B.1).

[1024] Exhibit A, Test Claim, filed January 31, 2011, pages 59-60 (Test Claim narrative).

[1025] Exhibit A, Test Claim, filed January 31, 2011, page 28 (Test Claim narrative).

curriculum, include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as Certificate of Completion, and/or attendance sheets. The formal training curriculum shall:

1. Highlight the potential effects that Permittee or Public activities related to their job duties can have on water quality.

2. Overview the principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP.

3. Discuss the provisions of the DAMP that relate to the duties of the target audience, including but not limited to;

...

b. Overview of CEQA requirements contained in Section XII.C of this Order.

...

F. Schedule: At a minimum, the training schedule should include the following: [relevant portions]

1. New Permittee employees responsible for implementing requirements of this Order must receive informal training within six months of hire and formal training within one year of hire.

[4] Other existing Permittee employees responsible for implementing the requirements of this Order must receive formal training at least once during the term of this Order.

[5] The start date for training programs described in this Section shall be included in the schedule required in Section III.A.1.q, but shall be no later than six months after Executive Officer approval of DAMP updates applicable to the Permittee activities described in Section XIV.[1026]

The claimants allege that "Section XV.C requires the permittees, including Claimants, to develop an additional training program for WQMP review and CEQA requirements" and that "Section XV.F requires implementation of that training in formal training sessions."[1027] The supporting declarations reference Section XV.C only, stating: "Section XV.C of the Permit required the Permittees, including the [claimants], to

[1026] Exhibit A, Test Claim, filed January 31, 2011, page 59 (Test Claim narrative). The Test Claim narrative quotes Sections XV.F.4, and XV.F.5, but mislabels them XV.F.2 and XV.F.3, respectively.

[1027] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

conduct formal training of their employees, including with respect to WQMP reviews and in CEQA requirements set forth in the Permit."[1028]

Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state.

The claimants specifically allege that Section XV.C requires them to develop a formal training program on WQMP review and the CEQA requirements contained in the test claim permit and quote the relevant provisions of Section XV.C that pertain to WQMP review and CEQA requirements. While Section XV.F is omitted from some of the claimants' descriptions of the newly required activities, the claimants have provided direct excerpts from Sections XV.F.1, XV.F.4, and XV.F.5 in the test claim narrative and cite Section XV.F as requiring the claimants to implement the formal training program described in Section XV.C ("Section XV.F. requires implementation of that training in formal training sessions"[1029]). The Commission therefore finds that Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 as they relate to training staff on "WQMP review and the CEQA requirements" are properly pled.

The Commission further finds that the claimants have not pled Sections XV.A, XV.B, XV.D, XV.E, XV.G, XV.H as part of the employee training program requirements. Section XV.A pertains to revisions to the DAMP and LIPs to reflect each permittee's employee training program;[1030] Section XV.B discusses training for vector control district staff; Section XV.D addresses informal training; Section XV.E requires annual reporting on formal employee training; Section XV.G requires verification of BMP training from contract staff; and Section XV.H requires the permittees to provide electronic notice to Regional Board staff regarding upcoming formal training sessions. Nothing in the test claim narrative or supporting declarations discuss, quote, or refer to any of these sections as imposing new employee training program requirements on the permittees.

As explained below, the Commission finds that Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 impose a state-mandated new program or higher level of service for the following activities:

- Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to *project-specific* WQMP review on the following:
    - Review and approval of project-specific WQMPs
    - Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality

[1028] Exhibit A, Test Claim, filed January 31, 2011, pages 68, 77, 82, 88, 95, 100, 107, 113, 119 (supporting declarations).

[1029] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

[1030] The claimants pled a portion of Section XV.A of the test claim permit as part of the Local Implementation Plan activities; that provision is separately analyzed in Section IV.B.1 herein.

- Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP
- Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit.

- Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for implementing the requirements of the test claim order related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers); define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Section XV.C).[1031]
- New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Section XV.F.1).[1032]
- Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive formal training at least once during the term of the test claim permit (Section XV.F.4).[1033]
- Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit related to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Section XV.F.5).[1034]

[1031] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1032] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.1).

[1033] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.4).

[1034] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5).

a. Background

i. Federal law requires stormwater management programs to include structural and source control measures to reduce pollutants from runoff from commercial areas, residential areas, and construction sites, and also requires training for construction site operators.

Federal law requires stormwater management programs to include "a description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system"[1035] and specifies that management programs shall include "a program to reduce to the [MEP], pollutants in discharges from [MS4s] associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as *educational activities*, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities."[1036]

As the test claim permit's Fact Sheet explains,

> Federal regulation, 40 CFR 122.26(d)(2)(iv)(A), requires the permittees to ensure that their activities and facilities do not cause or contribute to violations of water quality standards in receiving waters, and *education of permittee planning, inspection, and maintenance staff* is critical to ensure that permittee facilities and activities do not cause or contribute to an exceedance of receiving water quality standards.[1037]

The federal regulations also require educational and training measures for construction site operators, as follows:

> A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include: [¶…¶] (4) A description of appropriate *educational and training measures for construction site operators*.[1038]

*ii. The prior permit required training for permittee inspection staff regarding compliance with the **model** WQMP during project construction and post-construction implementation and maintenance of appropriate BMPs at industrial and commercial facilities. The prior permit also required training for public agency staff, contract field operations staff, and permittee staff on fertilizer and pesticide*

[1035] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A).

[1036] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(6).

[1037] Exhibit A, Test Claim, filed January 31, 2011, page 343 (test claim permit, Appendix 6 [Fact Sheet]).

[1038] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(D).

management, model maintenance procedures, and other pollution control measures.

To understand the training requirements of the co-permittees' staff under the prior permit, it is first necessary to understand what the prior permit required them to do with respect to development, including inspections of construction sites and existing industrial and commercial facilities, and land use approval processes, including review and approval of project-specific WQMPs and CEQA review.

The prior permit required the permittees to create the Riverside County Water Quality Management Plan (WQMP), which the Regional Board approved on September 17, 2004.[1039] The WQMP (also referred to as the model WQMP) is an enforceable element of the MS4 permit and applies to all co-permittees.[1040] The model WQMP is a guidance document that "incorporate[s] some of the watershed protection principles into the Co-Permittees' planning, construction and post-construction phases of New Development and Significant Redevelopment projects;"[1041] sets forth applicable structural and source control BMPs to be applied "when considering any map or permit for which discretionary approval is sought;" and provides guidelines for post-construction BMPs.[1042]

According to the prior permit, the primary objective of the model WQMP was to "ensure that the land use approval process of each Co-Permittee minimizes pollutant loads in Urban Runoff from project sites for a map or permit for which discretionary approval is sought."[1043] The co-permittees implement the model WQMP by reviewing and approving "project-specific" WQMPs, which are planning level documents prepared and submitted by the proponents of new development or significant redevelopment projects and address management of urban runoff from a project site based on the BMP guidelines contained in the model WQMP.[1044] As the DAMP explains:

> The project-specific WQMP…is not expected to contain final BMP design drawings and details (these will be in the construction plans). However,

---

[1039] Exhibit A, Test Claim, filed January 31, 2011, page 153 (test claim permit, Section II.G.6).

[1040] Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 2.

[1041] Exhibit A, Test Claim, filed January 31, 2011, page 153 (test claim permit).

[1042] Exhibit A, Test Claim, filed January 31, 2011, page 390 (Order No. R8-2002-0011, Section VIII.B).

[1043] Exhibit A, Test Claim, filed January 31, 2011, page 391 (Order No. R8-2002-0011, Section VIII.B.2).

[1044] Exhibit A, Test Claim, filed January 31, 2011, pages 153-154 (test claim permit); Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 2.

> the project-specific WQMP must identify and denote the location of selected structural BMPs, provide design parameters including hydraulic sizing of treatment BMPs and convey final design concepts. BMP fact sheets can be used in conjunction with project-specific design parameters and sizing to convey design intent. BMP fact sheets typically contain detailed descriptions of each BMP, applications, advantages/disadvantages, design criteria, design procedure, and inspection and maintenance requirements to ensure optimal performance of the BMPs.[1045]

Approval of a project-specific WQMP is required before the co-permittees may issue a building or grading permit for a new development or significant redevelopment project.[1046] The DAMP describes the co-permittees' project-specific WQMP review and approval activities as follows:

> When reviewing project-specific WQMPs submitted for approval, Co-Permittees assess the potential project impacts on Receiving Waters and ensure that the project-specific WQMP adequately identifies such impacts, including all pollutants and hydrologic conditions of concern. The Co-Permittees examine the identified BMPs, as a whole, to ensure that they address the pollutants and conditions of concern identified within the project-specific WQMP.[1047]

The co-permittee staff responsible for implementing the project-specific WQMP review and approval requirements under the prior permit varied by municipality, but generally consisted of staff from the planning, public works, building and safety, and engineering departments.[1048]

The prior permit also required the permittees to review and revise their CEQA review processes to ensure consistency with the permit requirements and to mitigate the impact to urban runoff quality from new development and significant redevelopment projects.

> In order to reduce pollutants and runoff flows from New Development and Significant Redevelopment to the MEP, the co-permittees shall at a minimum: a. *Review their respective* land use approval and *CEQA review*

[1045] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 34.

[1046] Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 3.

[1047] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 34.

[1048] Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 4.

processes to insure [sic] that each addresses Urban Runoff issues consistent with provisions of this Order and make appropriate revisions to each.[1049]

* * *

Within twelve (12) months of this Order's adoption, the Co-Permittees shall *review their respective* land use approval and *CEQA processes to ensure that Urban Runoff issues are properly considered and addressed*. If necessary, these processes should be revised to consider and mitigate impacts to Urban Runoff quality. These changes may include amending the general plan, modifying the land use approval process or the environmental assessment form, which may include adding a section on Urban Runoff quality issues. The findings of this review and the actions taken by the Co-Permittees shall be reported to the Regional Board in the Annual Report for the corresponding year in which the review is completed.[1050]

The prior permit required the following potential impacts to urban runoff quality to be considered during the CEQA review process:

a. Potential impact that construction of the project may have on Urban Runoff.

b. Potential impact that operation of the project may have on Urban Runoff.

c. Potential for discharge of pollutants in Urban Runoff from areas identified within the project site to be used for material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.

d. Potential for pollutants in Urban Runoff discharged from a project site that may affect the beneficial uses of the Receiving Waters.

e. Potential for significant changes in the flow velocity or volume of Urban Runoff from a project site that would result in environmental harm.

f. Potential for significant increases in erosion of a project site or surrounding areas.[1051]

These CEQA requirements are restated in the DAMP.[1052] The DAMP also describes the CEQA environmental review process and provides guidance, checklists, and

[1049] Exhibit A, Test Claim, filed January 31, 2011, page 387 (Order No. R8-2002-0011, Section VIII.A.5).

[1050] Exhibit A, Test Claim, filed January 31, 2011, page 388 (Order No. R8-2002-0011, Section VIII.A.8), emphasis added.

[1051] Exhibit A, Test Claim, filed January 31, 2011, page 388 (Order No. R8-2002-0011, Section VIII.A.8).

document templates for the permittees in conducting CEQA review. The DAMP explains that while "nearly all" of the permittees use the State of California's CEQA Guidelines project application form, which identifies "specific questions about the project to help environmental planners assess the potential for significant environmental impacts…there are no specific project description questions that help characterize the potential for impacts associated with Urban Runoff."[1053] Therefore, the permittees revised their application forms to include line items for the expected percent change in pervious surface area of the site and submittal of preliminary project-specific WQMPs, if applicable, (along with required submittal of other development plans).[1054]

Thus, the WQMP review and CEQA review processes are interrelated and foundational components of development planning under the prior permit.[1055]

The prior permit required the co-permittees to perform inspection activities for construction sites, industrial facilities, and commercial facilities. The co-permittees were required to inventory and prioritize all active construction sites for which they had issued either a grading or building permit and inspect those construction sites to determine compliance with their ordinances, regulations, and codes, and with the conditions of approval governing the permit, including the conditions in the WQMP.[1056]

The co-permittees were also required to inventory and prioritize existing industrial and commercial facilities for inspection based on their threat to water quality.[1057] Industrial facilities had to be inspected for the following:

a. submittal of a Notice of Intent (NOI) to comply with the General Industrial Activities Storm Water Permit or other permit issued by the State or Regional Board;

b. compliance with the co-permittee's stormwater ordinance;

c. active non-stormwater discharges, potential illicit connections, and illegal discharges;

[1052] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 26-29.

[1053] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 28.

[1054] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 28.

[1055] See Figure 6-1, illustrating the interrelated relationship between the General Plan, environmental review process, and development permit process. Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 25.

[1056] Exhibit A, Test Claim, filed January 31, 2011, pages 369, 396-397 (Order No. R8-2002-0011, Section IX.A.2-4).

[1057] Exhibit A, Test Claim, filed January 31, 2011, pages 398-400, 403-404 (Order No. R8-2002-0011).

d. potential for discharge of pollutants from areas of material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas; and

e. implementation and maintenance of appropriate BMPs.[1058]

Commercial facilities had to be inspected for the following:

a. commercial activity types and SIC codes;

b. compliance with the co-permittee's stormwater ordinance; submittal of a Notice of Intent (NOI) to comply with the General Industrial Activities Storm Water Permit or other permit issued by the State or Regional Board (if applicable);

c. the E/CS [Enforcement Compliance Strategy].[1059]

The prior permit also required the co-permittees to take appropriate actions to bring commercial and industrial facilities into compliance with local ordinances, rules, regulations, and the "*WQMP, when approved*."[1060]

The prior permit then required co-permittee *inspection* staff to be trained. Section IX.A.5. of the prior permit required training for construction site inspection staff on the following topics, including training on the model WQMP and the DAMP, the latter of which contained the CEQA review requirements under the prior permit.[1061]

> As described in the E/CS, the Co-Permittees will provide training to staff involved in inspecting construction sites. Staff training will address the requirements of the following:
>
> a. The Storm Water Ordinances, resolutions, and codes;
>
> b. This Order, the approved WQMP, and the DAMP;
>
> c. The Construction Activity Permits;
>
> d. The E/CS.[1062]

[1058] Exhibit A, Test Claim, filed January 31, 2011, page 400 (Order No. R8-2002-0011, Section IX.B.4).

[1059] Exhibit A, Test Claim, filed January 31, 2011, pages 404-405 (Order No. R8-2002-0011, Section IX.C.6). The permittees established the "Enforcement/Compliance Strategy" (E/CS), dated December 20, 2001, which addresses compliance strategies for industrial facilities, commercial facilities, and construction sites. Exhibit A, Test Claim, filed January 31, 2011, pages 369-370 (Order No. R8-2002-0011).

[1060] Exhibit A, Test Claim, filed January 31, 2011, pages 401 (Order No. R8-2002-0011, Section IX.B.8), 406 (Order No. R8-2002-0011, Section IX.C.12).

[1061] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 25-29.

[1062] Exhibit A, Test Claim, filed January 31, 2011, page 397 (Order No. R8-2002-0011, Section IX.A.5).

The prior permit also required construction site inspectors to receive training on the Storm Water Pollution Prevention Plan (SWPPP)[1063] and selection and maintenance of BMPs, required prior notification of formal classroom training activities to be provided to Regional Board staff, and specified the following schedules for when training for construction site inspection staff was to occur:

> Construction site inspectors will also receive training regarding SWPPPs, selection and maintenance of appropriate BMPs for construction sites, including erosion and sediment control. Each Co-Permittee shall have arranged for adequate training of its current inspection staff within twelve (12) months of this Order's adoption and on an annual basis thereafter, prior to the start of the "Rainy Season" (October 1 through May 31st). Training programs should be coordinated with Regional Board staff and prior notification of formal classroom training activities shall be provided to Regional Board staff. New hires or transfers that will be performing construction site inspections for a Co-Permittee shall be trained within six (6) months of starting inspection duties.[1064]

Sections IX.B.10 through IX.B.12 of the prior permit required training for industrial facilities inspection staff on the following subjects and on the following time schedules, and required prior notification of formal classroom training activities be provided to the Regional Board staff:

> 10. As described in the E/CS [Enforcement Compliance Strategy], the Co-Permittees shall provide training to staff that are involved in conducting compliance surveys/inspections of industrial facilities. Staff training will address the requirements of the following:
>
> a. The Storm Water Ordinance
>
> b. This Order and the DAMP
>
> c. The General Industrial Activities Storm Water Permit and any other permit issued to industrial facilities within the Permit Area by the State or Regional Board; and
>
> d. The E/CS.
>
> 11. Each Co-Permittee's staff assigned to conduct the industrial facilities compliance surveys/inspections will also receive training regarding pollution prevention plans and implementation of appropriate BMPs for industrial facilities.

[1063] The prior permit does not define "Storm Water Pollution Prevention Plan," but the test claim permit provides the following definition: "Plan required by the General Construction Permit to minimize and manage pollutants to minimize pollution from entering the MS4, identifying all potential sources of pollution and describing planned practices to reduce pollutants from discharging off the site." Exhibit A, Test Claim, filed January 31, 2011, page 291 (test claim permit, Appendix 4 [Glossary]).

[1064] Exhibit A, Test Claim, filed January 31, 2011, page 397 (Order No. R8-2002-0011, Section IX.A.6).

Training programs should be coordinated with Regional Board staff and prior notification of formal classroom training activities shall be provided to the Regional Board staff.

12. Each Co-Permittee shall have arranged for adequate training of its staff assigned to conduct the industrial facilities compliance surveys/inspections within eighteen (18) months of this Order's adoption, and on an annual basis thereafter. New hires or transfers that will be performing the industrial facilities compliance surveys/inspections for a Co-Permittee will be trained within six (6) months of starting field duties.[1065]

Sections IX.C.13 through IX.C.15 of the prior permit required training for commercial facilities inspection staff on the following subjects, and on the following time schedules, and required prior notification of formal classroom training activities be provided to the Regional Board staff:

13. As described in the E/CS, Co-Permittees will provide training to staff that is involved in the compliance surveys/inspections of commercial facilities. Staff training will address the requirements of the following:

a. The Storm Water Ordinance;

b. This Order and the DAMP;

c. The General Industrial Activities Storm Water Permits and any other permit issued to a commercial facility within the Permit Area by the State or Regional Board;

d. The E/CS;

e. Pollution prevention plans; and,

f. Implementation and maintenance of appropriate BMPs for commercial sites.

14. Training programs should be coordinated with Regional Board staff and prior notification of formal classroom training activities shall be provided to Regional Board staff.

15. Each Co-Permittee shall have arranged for adequate training of its current municipal staff assigned to conduct the commercial facility compliance survey/inspection within eighteen (18) months of this Order's adoption, and on an annual basis thereafter. New hires or transfers that will be performing the commercial facilities compliance surveys/inspections for a Co-Permittees will be trained within six (6) months of starting field duties.[1066]

[1065] Exhibit A, Test Claim, filed January 31, 2011, page 402 (Order No. R8-2002-0011, Sections IX.B.10 through IX.B.12).

[1066] Exhibit A, Test Claim, filed January 31, 2011, pages 406-407 (Order No. R8-2002-0011, Sections IX.C.13 through IX.C.15).

Thus, under the prior permit, the co-permittees had a duty to "take appropriate actions" to bring industrial and commercial new development and significant redevelopment projects into compliance with the local ordinances, rules, regulations, and the model WQMP (an enforceable element of the prior permit),[1067] and had to train inspection staff on implementation and maintenance of appropriate BMPs at industrial and commercial facilities.[1068] The model WQMP specified that prior to closing out a building or grading permit, or issuing a certificate of occupancy or use, the project applicant had to demonstrate conformance of all structural BMPs with approved plans and specifications and implementation of all non-structural BMPS.[1069]

However, the prior permit did not require the permittees to provide training to development staff responsible for reviewing and approving project-specific WQMPs submitted by developers.

Finally, the prior permit also required the permittees to provide training to public agency staff, contract field operations staff, and permittee staff on fertilizer and pesticide management, model maintenance procedures, and other pollution control measures, as follows:

> At least on an annual basis, each Permittee shall provide training to the public agency staff and to contract field operations staff on fertilizer and pesticide management, model maintenance procedures, and other pollution control measures. Permittee staff responsible for application of fertilizer or pesticides shall attend at least three of these training sessions during the five-year term of this Order (from 2002 to 2007).[1070]

"Public agency staff" included staff of non-permittee public agency organizations in the permittees' jurisdictions that may discharge pollutants to MS4s (i.e., federal agencies,

---

[1067] Exhibit A, Test Claim, filed January 31, 2011, pages 401 (Order No. R8-2002-0011, Section IX.B.8), 406 (Order No. R8-2002-0011, Section IX.C.12). "When approved, the WQMP becomes an enforceable element of the MS4 Permit and is applicable to all Co-Permittees." Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 1. The Regional Board approved the WQMP on September 17, 2004. Exhibit A, Test Claim, filed January 31, 2011, page 153 (test claim permit, Section II.G.6).

[1068] Exhibit A, Test Claim, filed January 31, 2011, pages 402 (Order No. R8-2002-0011, Section IX.B.11), 406 (Order No. R8-2002-0011, Section IX.C.13).

[1069] Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, pages 3-4.

[1070] Exhibit A, Test Claim, filed January 31, 2011, page 410 (Order No. R8-2002-0011, Section XI.K).

hospitals, school districts, universities and colleges, railroads, special districts/wastewater agencies, and water districts).[1071]

b. Sections XV.C, and XV.F.1, XV.F.4, and XV.F.5 of the test claim permit impose a state-mandated new program or higher level of service to provide formal training to permittee staff responsible for reviewing and approving ***project-specific*** WQMPs, including on the CEQA requirements contained in Section XII.C of the test claim permit.

i. The training requirements in sections XV.C, XV.F.1, XV.F.4, and XV.F.5 are new when compared to prior law.

Section XV.C of the test claim permit provides:

> The formal training programs shall educate Permittee employees responsible for implementing requirements of this Order, by providing training on the following Permittee activities: construction site inspection, ***WQMP review***, residential/industrial/commercial site inspection, and Permittee facility maintenance Formal training may be conducted in classrooms or using videos, DVDs or other multimedia. The program shall consider all applicable Permittee staff such as storm water program managers, construction/industrial/ commercial/residential inspectors, planners, engineers, public works crew, etc. and shall: define the required knowledge and competencies for each Permittee Activity, outline the curriculum, include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as Certificate of Completion, and/or attendance sheets. The formal training curriculum shall:

[1071] Section XI.A of the prior permit states:

> Successful implementation of the provisions and limitations in this Order will require the cooperation of all the public agency organizations within Riverside County having programs/activities that have an impact on Urban Runoff quality. This may include, but not limited to, those listed in Appendix 2. As such, these organizations are expected to actively participate in implementing this area-wide Urban Runoff program. The Permittees shall be responsible for involving the public agency organizations in their Urban Runoff program.

Exhibit A, Test Claim, filed January 31, 2011, page 408 (Order No. R8-2002-0011, Section XI.A). Appendix 2 to the prior permit contains a list of federal agencies, hospitals, school districts, universities and colleges, railroads, special districts/wastewater agencies, and water districts. Exhibit A, Test Claim, filed January 31, 2011, page 419 (Order No. R8-2002-0011, Appendix 2 [Other Entities that May Discharge Pollutants to MS4s]).

> 1. Highlight the potential effects that Permittee or Public activities related to their job duties can have on water quality.
>
> 2. Overview the principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP.
>
> 3. Discuss the provisions of the DAMP that relate to the duties of the target audience, including but not limited to…
>
> [¶]
>
> b. Overview of CEQA requirements contained in Section XII.C of this Order.[1072]

Section XV.F addresses the training schedule, as follows:

> 1. New Permittee employees responsible for implementing requirements of this Order must receive informal training within six months of hire and formal training within one year of hire.
>
> [¶]…[¶]
>
> 4. Other existing Permittee employees responsible for implementing the requirements of this Order must receive formal training at least once during the term of this Order.
>
> 5. The start date for training programs described in this Section shall be included in the schedule required in Section III.A.1.q, but shall be no later than six months after Executive Officer approval of DAMP updates applicable to the Permittee activities described in Section XIV.[1073]

As indicated above, the claimants are seeking reimbursement only for the formal training requirements relating to WQMP review and the CEQA requirements.[1074] While the claimants acknowledge that the prior permit "contained some training requirements for permittee staff, such as training for persons conducting inspection of construction sites," the claimants allege that the prior permit did not include "the requirement to conduct training in WQMP review and in the requirements of CEQA."[1075]

The Regional Board concedes that the test claim permit "contains a more refined level of specificity" and "additional training regarding new or enhanced program elements" but argues that the training requirements are "not much different" from those under the prior permit.

[1072] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C), emphasis added.

[1073] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Sections XV.F.1, XV.F.4, and XV.F.5).

[1074] Exhibit A, Test Claim, filed January 31, 2011, pages 59-60 (Test Claim narrative).

[1075] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

> Fundamentally, the 2002 and 2010 Permits require sufficient training so that Permittee staff can effectively implement the MS4 program. It makes logical sense that revisions to the MS4 program, as reflected in the 2010 Permit, would result in additional training regarding new or enhanced program elements. Therefore, as the updated training provisions are designed to facilitate improved implementation of LID BMPs, the challenged provisions are consistent with the federal minimum MEP standard.[1076]

For the reasons below, the Commission finds that the training requirements imposed by Sections XV.C., XV.F.1, XV.F.4, and XV.F.5 and as pled by the claimants are new when compared to prior law.

Section XV.C of the test claim permit requires that the permittees' formal training programs shall educate Permittee employees responsible for implementing requirements of this Order, by providing training on "WQMP review." The test claim permit does not define "WQMP review" in the employee training context. However, as explained below, "WQMP review" as used in Section XV.C of the test claim permit refers to the *project-specific* WQMP review and approval activities the permittees must perform prior to issuing a building or grading permit.

According to the Fact Sheet, the additional training requirements under test claim permit includes training for permittee planners:

> Training was provided to Permittee employees to implement New Development Guidelines and Public Works BMPs. The fourth-term MS4 Permit specifies *additional training requirements* to focus on necessary competencies for storm water program managers, *Permittee planners* and inspection staff. This was added following information collected during Regional Board staff audits of Permittees' storm water management programs, which found that a number of the Permittees' staff and/or contractors were not adequately trained to properly implement the required program elements contained within the third term MS4 Permit and/or training programs were not properly documented.[1077]

The Fact Sheet further explains that the test claim permit requires the permittees to design a training curriculum for permittee staff "*involved in the review and approval of WQMPs and CEQA documents*" to facilitate "better inter-departmental collaboration and communication…between *planners, plan reviewers, engineers* and inspectors to ensure

---

[1076] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 42.

[1077] Exhibit A, Test Claim, filed January 31, 2011, page 324 (test claim permit, Appendix 6 [Fact Sheet]), emphasis added.

that appropriate post-construction BMPs are approved, installed, and are operational."[1078]

As discussed above, the permittees created the Riverside County Water Quality Management Plan (model WQMP) under the prior permit, which was approved on September 17, 2004. The model WQMP sets forth structural and source control BMPs for discretionary development projects and guidelines for post-construction BMPs[1079] and provides "a framework to incorporate some of the watershed protection principles into the Co-Permittees' planning, construction and post-construction phases of New Development and Significant Redevelopment projects."[1080] Implementation of the model WQMP requires the co-permittees to review and approve project-specific WQMPs (project level planning documents prepared by new development or significant redevelopment project applicants) before issuing a building or grading permit.[1081]

The model WQMP explains the project-specific WQMP review and approval activities were performed by staff within the planning, public works, building and safety, and engineering departments,[1082] and information contained in the permittees' 2017-2018 and 2018-2019 annual reports shows that training on the WQMP under the test claim permit is provided to "planning staff."[1083]

[1078] Exhibit A, Test Claim, filed January 31, 2011, page 345 (test claim permit, Appendix 6 [Fact Sheet]), emphasis added.

[1079] Exhibit A, Test Claim, filed January 31, 2011, pages 153 (test claim permit, Section II.G.6), 390 (Order No. R8-2002-0011, Section VIII.B).

[1080] Exhibit A, Test Claim, filed January 31, 2011, pages 153-154 (test claim permit, Section II.G.6).

[1081] Exhibit A, Test Claim, filed January 31, 2011, pages 59-60 (Test Claim narrative); Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 2; Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1 ["Each Permittee shall continue to require project-specific WQMPs for those maps and permits described below for which discretionary approval is sought and as further described in Section 6 and Appendix O of the DAMP"]).

[1082] Exhibit N (19), Excerpts from Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region and Santa Margarita River Region, September 17, 2004, page 4.

[1083] Exhibit N (20), Excerpts from Riverside County Watershed Protection, 2017-2018 Annual Progress Report to the Santa Ana Regional Water Quality Control Board, SARWQCB Order No. R8-2010-0033, November 30, 2018, pages 2-3; Exhibit N (21), Excerpts from Riverside County Watershed Protection, 2018-2019 Annual Progress Report to the Santa Ana Regional Water Quality Control Board, SARWQCB Order No. R8-2010-0033, November 30, 2019, pages 2-3.

Therefore, "WQMP review" as used in Section XV.C of the test claim permit refers to the *project-specific* WQMP review and approval activities the permittees must perform *prior to issuing a building or grading permit for a discretionary development project*; planning activities which are performed by co-permittee planning staff (i.e., planners, plan reviewers, and engineers) and which exclude inspection staff.

The requirement to provide formal training to co-permittee staff responsible for implementing the *project-specific* WQMP review is new. Under the prior permit, inspection staff received training on the *model* WQMP, and that training was limited to compliance with the model WQMP during project construction and post-construction implementation and maintenance of appropriate BMPs at industrial and commercial facilities.[1084] Training for the permittee staff involved in the project review, approval and permitting stages of development planning, however, was not required. In addition, that Section XV.C's reference to "WQMP review" is intended to exclude permittee inspection staff (who received training on the inspection-related aspects of the model WQMP under the prior permit) is evident from the list of permittee activities on which formal training is required, which separately identifies inspection activities: "construction site inspection, WQMP review, *residential/industrial/commercial site inspection*, and Permittee facility maintenance."[1085] Again, the claimants have pled only "WQMP review" from this list.

Section XV.C further requires that formal training provided to permittee staff involved in project-specific WQMP review cover the following topics: the potential effects that permittee or public activities related to their job duties can have on water quality; the principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP; and the provisions of the DAMP that relate to their job duties, "including but not limited to . . . (b) the CEQA requirements contained in Section XII.C" of the test claim permit.[1086] Section XII.C states in relevant part:

> The Co-Permittees, when acting as a CEQA Lead Agency for a project requiring a CEQA document, must identify at the earliest possible time in the CEQA process resources under the jurisdiction by law of the Regional Board which may be affected by the project. The preliminary WQMP should identify the need for any CWA Section 401 certification. The Co-Permittees should coordinate project review with Regional Board staff pursuant to the requirements of CEQA. Upon request by Regional Board staff, this coordination shall include the timely provision of the discharger's

---

[1084] Exhibit A, Test Claim, filed January 31, 2011, pages 397 (Order No. R9-2002-0011, Section IX.A.5-6), 402 (Order No. R8-2002-0011, Section IX.B.11), 406 (Order No. R8-2002-0011, Section IX.C.13).

[1085] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1086] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

identity and their contact information and the facilitation of early consultation meetings.[1087]

The test claim permit explains that if the co-permittees do not abide by applicable legal authorities, including CEQA, when reviewing and approving new development projects, the projects could cause discharge of pollutants via urban runoff.[1088]

Moreover, since formal training of co-permittee staff involved in project-specific WQMP review is new, so are the parameters that attach to formal training generally: defining the required knowledge and competencies for each permittee activity; outlining the training curriculum; using testing or other procedures to determine that the employees attending formal training acquire the knowledge necessary to perform their job duties; and providing documentation showing that employees have attended and completed training.[1089]

Finally, Section XV.F sets forth *when* formal training must be provided. Section XV.F.1 requires new permittee employees responsible for implementing the requirements of the test claim permit to receive formal training within one year of hire. Section XV.F.4 requires existing permittee employees who are responsible for implementing the requirements of the test claim permit pertaining to project-specific WQMP review to receive formal training at least once during the term of the test claim permit. And Section XV.F.5 requires the start date for formal training to be included in a schedule required under a separate provision of the test claim permit (which incorrectly refers to "Section III.A.1.q," and should refer to "Section III.A.1.s") and requires formal training to start no later than six months after Executive Officer approval of certain revisions to the DAMP.[1090]

[1087] Exhibit A, Test Claim, filed January 31, 2011, page 212 (test claim permit, Section XII.C.3). See also Figure 6-1, illustrating the interrelated relationship between the General Plan, environmental review process, and development permit process. Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 25.

[1088] Exhibit A, Test Claim, filed January 31, 2011, page 152 (test claim permit, Section II.G).

[1089] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1090] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5). However, Section III.A.1.q does not require or even discuss a schedule; instead it deals with developing guidelines for training stormwater program managers and inspectors. (Exhibit A, Test Claim, filed January 31, 2011, page 174.) Section III.A.1 lists the responsibilities of the principal permittee in managing the overall urban runoff program. The only provision in Section III.A.1 that requires a schedule is subpart (s), which requires the principal permittee, within six months of adoption of the test claim permit, to coordinate a review of the DAMP with the co-permittees to determine the need for revisions to ensure compliance with the test claim permit requirements and to establish a schedule for those DAMP revisions. (Exhibit A, Test Claim, filed

Therefore, the Commission finds that Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 require the permittees to perform the following new activities:

1. Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to project-specific WQMP review on the following:
    a. Review and approval of project-specific WQMPs.
    b. Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality
    c. Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP
    d. Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit (Section XV.C).[1091]
2. Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for implementing the requirements of the test claim permit related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers; define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Section XV.C).[1092]
3. New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Section XV.F.1).[1093]
4. Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive

---

January 31, 2011, page 175.) Therefore, the reference in Section XV.F.5 to a schedule required by Section III.A.1.q is in error and the correct reference is to the schedule of DAMP revisions required by Section III.A.1.s.

[1091] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1092] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1093] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.1).

formal training at least once during the term of the test claim permit (Section XV.F.4).[1094]

5. Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit relating to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Section XV.F.5).[1095]

ii. The new requirements in Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 impose a state-mandated new program or higher level of service.

The claimants argue the requirements to develop and conduct employee training on WQMP review and CEQA requirements are mandated by the state and impose a new program or higher level of service.[1096] The Regional Board asserts that the challenged employee training provisions "are consistent with the federal minimum MEP standard."[1097]

The Commission finds that the new requirements imposed by Sections XV.C, and XV.F.1, XV.F.4, and XV.F.5 are mandated by the state and impose a new program or higher level of service.

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose the requirement by virtue of a "true choice," the requirement is not federally mandated.[1098]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be

---

[1094] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.4).

[1095] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5).

[1096] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

[1097] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 43.

[1098] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

satisfied.[1099] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[1100]

Federal law discusses "educational activities" as a component of the federal requirement to reduce pollutants associated with the application of pesticides, herbicides and fertilizer to the MEP; however, that type of employee training is not alleged in the test claim.[1101] Federal law also requires that the stormwater program include appropriate educational and training measures for construction site operators.[1102] However, federal law does not expressly require training for employees that review and approve project-specific WQMPs. While federal law requires the permittees to implement source control measures to reduce pollutants from runoff from commercial and residential facilities, even broadly construing that requirement to include "education of permittee planning, inspection, and maintenance staff" as the Regional Board has, does not mean that federal law requires the employee training requirements at issue.[1103] Instead, the state has exercised its discretion in electing to require the permittees to create and implement a formal employee training program for development planning staff with highly specific parameters and curriculum requirements. Moreover, there is no evidence in the record to show that that the disputed permit terms are the only means by which MEP can be satisfied. Accordingly, the Commission finds that the new activities required by Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 are mandated by the state.

Additionally, the requirements impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[1104] The new requirements imposed by Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 are expressly directed toward local agency permittees, and thus, are unique to government.[1105] The new requirements also provide a governmental service to the public. "The challenged

---

[1099] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[1100] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[1101] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A)(6).

[1102] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(D).

[1103] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv)(A).

[1104] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

[1105] See *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 559–560 (finding that a NPDES permit issued by the Regional Water Quality Control Board, Los Angeles Region applies by its terms only to the local governmental entities identified in the permit).

requirements are not bans or limits on pollution levels, they are mandates to perform specific actions" designed to reduce the discharge of pollutants into the MS4 to the MEP, and prevent runoff discharges from the MS4 from causing or contributing to a violation of water quality standards.[1106] Providing formal training for permittee staff responsible for review and approval of project-specific WQMPs carries out the governmental function of "ensur[ing] that the land use approval process of each co-permittee will minimize pollutant loads in urban runoff from maps or permits for which discretionary approval is given."[1107]

Accordingly, the Commission finds that Sections XV.C, XV.F.1, XV.F.4, and XV.F.5 impose a state-mandated new program or higher level of service on the permittees to perform the following activities:

1. Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to project specific WQMP review on the following:
    a. Review and approval of project-specific WQMPs
    b. Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality
    c. Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP
    d. Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit (Section XV.C).[1108]
2. Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for implementing the requirements of the test claim order related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers); define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Section XV.C).[1109]

[1106] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 560; United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[1107] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1).

[1108] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1109] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

3. New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Section XV.F.1).[1110]
4. Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive formal training at least once during the term of the test claim permit (Section XV.F.4).[1111]
5. Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit relating to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Section XV.F.5).[1112]

9. The Requirements in Section XVII.A.3 of the Test Claim Permit, to Develop and Include in the First Annual Report a Proposal to Assess the Effectiveness of the Urban Runoff Management Program Using Specific Guidance Developed by the California Storm Water Quality Association (CASQA), Imposes a State-Mandated New Program or Higher Level of Service. However, Section XVII.A.3 Does Not Require the Permittees to Implement the Proposal When Annually Evaluating the Effectiveness of the Urban Runoff Management Program.

The claimants allege that Section XVII.A.3 of the test claim permit requires the permittees to develop and include in the first annual report a proposal for assessing the effectiveness of the urban runoff management program that uses specific criteria and guidance developed by the California Storm Water Quality Association (CASQA), and to use the proposal when performing the annual effectiveness assessment – in other words, to implement it.[1113] The claimants describe the mandated activities as follows:

> The requirements set forth in Section XVII.A.3 of the 2010 Permit require the permittees, including claimants, *to develop and submit a proposal for assessment of the Urban Runoff management program effectiveness using specific guidance, and then to implement that assessment*. This requires the permittees to develop mechanisms and databases to track, on an ongoing basis, additional information for each component of their Urban Runoff management program, such as, but not limited to the IC/ID

[1110] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.1).

[1111] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.4).

[1112] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5).

[1113] Exhibit A, Test Claim, filed January 31, 2011, pages 61 (Test Claim narrative), 235 (test claim permit, Section XVII.A.3).

programs, inspection programs, New Development Programs, Public Education and Training programs, and programs for Permittee Facilities and Activities required pursuant to the Permit. Further, it requires the Permittees to annually analyze that information for inferences that can be garnered regarding the effectiveness of their programs, and describe the findings and recommendations related to that analysis in annual reports.[1114]

The Commission finds that Section XVII.A.3 imposes a state-mandated new program or higher level of service on the permittees to perform the following one-time activities:

- Develop and include in the first annual report (November 2010) after the adoption of the test claim permit a proposal for assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance. The assessment measures are required to target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B.[1115]

The Commission further finds that Section XVII.A.3 does not require the permittees to use the proposal when annually evaluating the effectiveness of the urban runoff management program.[1116]

a. Background

i. Federal law requires the permittees to assess the effectiveness of their urban runoff management programs and to identify any proposed revisions in the annual report to ensure that water quality standards and objectives are achieved.

The CWA requires an NPDES permittee to monitor discharges into the waters of the United States in a manner sufficient to determine whether it is in compliance with the permit and whether it is meeting water quality standards.[1117] An NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance.[1118]

[1114] Exhibit A, Test Claim, filed January 31, 2011, page 61 (Test Claim narrative), emphasis added.

[1115] Exhibit A, Test Claim, filed January 31, 2011, page 235 (test claim permit, Section XVII.A.3).

[1116] The claimants concur with these findings. Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 28.

[1117] United States Code, title 33, section 1342(a)(2); Code of Federal Regulations, title 40, section 122.44(i)(1).

[1118] Code of Federal Regulations, title 40, section 122.26(d)(2)(i)(F).

Federal regulations also require that NPDES permits include conditions to achieve water quality standards and objectives.[1119]

Accordingly, federal law requires each permittee to propose a management program to reduce the discharge of pollutants to the MEP using BMPs, control techniques, and other appropriate systems.[1120] The program is required to include structural and source control measures to reduce pollutants from runoff discharged from the MS4, and to detect and remove non-stormwater discharges and improper disposal into the storm sewer.[1121] The proposed program must be accompanied by an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls.[1122] Management programs may impose controls on a system wide, watershed, jurisdictional, or individual outfall basis.[1123] The federal regulations also require the permittees to assess the controls comprising the management program to estimate "reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program."[1124]

In addition, federal regulations require the permittees to submit an annual report to the Regional Board, which must include the following information:

- The status of implementing the components of the stormwater management program that are established as permit conditions.
- Proposed changes to the stormwater management programs that are established as permit conditions. Such proposed changes shall be consistent with 40 Code of Federal Regulations 122.26(d)(2)(iii) [which requires a permittee to provide information, as specified, characterizing the quality and quantity of discharges covered in the permit application].
- Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit.
- A summary of data, including monitoring data that is accumulated throughout the reporting year.
- Annual expenditures and budget for the year following each annual report.

[1119] Code of Federal Regulations, title 40, section 122.44(d)(1), which states that NPDES permits must include "any requirements in addition to or more stringent than promulgated effluent limitations guidelines . . . necessary to . . . [a]chieve water quality standards established under section 303 of the CWA."

[1120] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1121] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1122] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1123] Code of Federal Regulations, title 40, section 122.26(d)(2)(iv).

[1124] Code of Federal Regulations, title 40, section 122.26(d)(2)(v).

- A summary describing the number and nature of enforcement actions, inspections, and public education programs.
- Identification of water quality improvements or degradation.[1125]

ii. The prior permit required annual assessment and reporting on the permittees' urban runoff management programs to ensure that the programs are effective in achieving compliance with water quality objectives.

Section IV.B of the prior permit required the permittees to annually assess and report on their urban runoff management programs.

> No later than November 30th of each year, the Permittees shall evaluate their Urban Runoff management programs and the Implementation Agreement and determine the need, if any, for revision. The Annual Report shall include the findings of this review and a schedule for any necessary revision(s).[1126]

Under the prior permit, the Drainage Area Management Plan (DAMP) served as the primary urban runoff management program document for the permittees.[1127] The DAMP translated the prior permit requirements into "the major programs and policies that the permittees individually and/or collectively develop and implement to manage urban runoff."[1128]

> The DAMP outlines the major programs and policies for controlling pollutants in Urban Runoff and the DAMP was approved by the Executive Officer on January 18, 1994. Since then, the Urban Runoff monitoring program has been expanded and the DAMP continues to be a dynamic document. This Order requires the Permittees to continue to implement the BMPs listed in the DAMP, and update or modify the DAMP, when appropriate, consistent with the MEP and other applicable standards; and

---

[1125] Code of Federal Regulations, title 40, section 122.42(c).

[1126] Exhibit A, Test Claim, filed January 31, 2011, page 382 (Order No. R8-2002-0011, Section IV.B).

[1127] "The DAMP is a programmatic document developed by the Permittees and approved by the Executive Officer that outlines the major programs and policies that the Permittees individually and/or collectively implement to manage Urban Runoff in the Permit Area." Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

[1128] The prior permit states: "The DAMP and amendments thereto are hereby made an enforceable part of this Order." Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011, Section XV.A.3).

> to continue to effectively prohibit illegal discharges and illicit connections to their respective MS4s.[1129]

Section XIII.B of the prior permit required the permittees to annually evaluate the DAMP to determine the need for revisions, and to include the findings of that review in the annual report.

> By August 1 of each year, beginning in 2004, the Permittees shall evaluate the DAMP to determine the need for revisions. The Permittees shall modify the DAMP, as necessary, or at the direction of the Executive Officer to incorporate additional provisions. Such provisions may include regional and watershed-specific requirements and/or WLAs developed and approved pursuant to the TMDL process for Impaired Waterbodies. Proposed revisions to the DAMP shall be submitted to the Executive Officer for review and approval. Revisions to the DAMP approved by the Executive Officer shall be implemented in a timely manner. The Annual Report shall include the findings of this review and a schedule for needed revisions.[1130]

Additionally, Section XIII.C specified that the permittees were required to include in the annual report a progress report on the following elements of their urban runoff management programs:

> 1. The formal training and coordination meeting needs for the Co-Permittees' staff responsible for performing compliance survey/inspections or educational programs;
>
> 2. Source identification and prioritization;
>
> 3. Grading and erosion control for construction sites;
>
> 4. Verification of coverage under the appropriate General Construction and Industrial Activities Permits;
>
> 5. Facility inspection and enforcement consistent with local ordinances, rules, and regulations;
>
> 6. Procedures for reporting to the Permittees and this Regional Board non-compliance with each Co-Permittee's Storm Water Ordinance and enhancing current planning review processes to better address issues regarding Urban Runoff;

[1129] Exhibit A, Test Claim, filed January 31, 2011, page 368 (Order No. R8-2002-0011, Finding 23).

[1130] Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011, Section XIII.A).

7. Implementation of new development BMPs, or identification of regional or subregional Urban Runoff treatment/infiltration BMPs in which New Development projects could participate.[1131]

And the prior permit's Monitoring and Reporting Program further required the annual report to include *effectiveness assessments of urban runoff management program components described in the DAMP*,[1132] as follows:

> At a minimum, the Annual Report shall include the following:
>
> 1. A review of the status of program implementation and compliance (or non-compliance) with the schedules contained in this Order;
>
> 2. *An assessment of the effectiveness of control measures established under* the illicit discharge elimination program and *the DAMP*. The effectiveness may be measured in terms of how successful the program has been in eliminating illicit connections/illegal discharges and reducing pollutant loads in Urban Runoff;
>
> 3. *An assessment of any modifications to* the WQMPs, or *the DAMP* made to comply with CWA requirements to reduce the discharge of pollutants to the MEP;
>
> 4. A summary, evaluation, and discussion of monitoring results from the previous year and any changes to the monitoring program for the following year;
>
> 5. A fiscal analysis progress report as described in Section XV, Provision B., of Order No. RS-2002-0011;
>
> 6. A draft work plan that describes the proposed implementation of the WQMPs and the DAMP for next fiscal year. The work plan shall include clearly defined tasks, responsibilities, and schedules for implementation of the storm water program and each Permittee's actions for the next fiscal year;
>
> 7. Major changes in any previously submitted plans/policies; and
>
> 8. *An assessment of the Permittees compliance status with the Receiving Water Limitations*, Section III of the Order, *including any proposed*

[1131] Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011, Section X.III.C).

[1132] "The DAMP is a programmatic document developed by the Permittees and approved by the Executive Officer that outlines the major programs and policies that the Permittees individually and/or collectively implement to manage Urban Runoff in the Permit Area." Exhibit A, Test Claim, filed January 31, 2011, page 436 (Order No. R8-2002-0011, Appendix 4 [Glossary]).

> *modifications to* the WQMPs or *the DAMP* if the Receiving Water Limitations are not fully achieved.[1133]

According to the permittees' 2007 Report of Waste Discharge (ROWD), during the prior permit term, the permittees implemented a revised overall program effectiveness assessment "as described in Section 12 of the DAMP" which consisted of "evaluation of achievement of short and long term strategies (that is, not directly based on the quality of Urban Runoff or receiving water quality)."[1134] The ROWD describes the revised program effectiveness assessment approach as follows:

> The long-term strategy for assessing effectiveness focuses on water quality data obtained as part of the Consolidated Monitoring Program. This is by necessity a long-term strategy since the first step is developing and understanding baseline data. Due to the inherent variability of Urban Runoff, years of monitoring data collection are necessary to identify statistically significant trends or draw conclusions on program effectiveness. Additionally, because there are (1) numerous program elements being implemented and revised concurrently, (2) other environmental regulations indirectly impact Urban Runoff, and (3) numerous other climatological, man-made, and environmental changes that occur in the watershed, the ability to identify cause-and-effect relationships between a specific program element and/or BMP and improvement in the quality of Urban Runoff is complicated, if not infeasible, in many cases.
>
> The short-term strategy for assessing the effectiveness focuses on quantitative, indirect methods of assessment. Each year the Permittees collect various metrics defined in the DAMP to assist with program evaluation. *As part of the ROWD, the Permittees will evaluate these metrics, including water quality data, in an effort to assess overall program effectiveness*. On an annual basis, the Permittees will review the metrics to determine if any course corrections on existing program elements may be beneficial.[1135]

[1133] Exhibit A, Test Claim, filed January 31, 2011, pages 427-428 (Order No. R8-2002-0011, Appendix 3, Section IV.B), emphasis added. The Monitoring and Reporting Program is a binding and enforceable part of the prior permit. Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011, Section XIV ["The Permittees shall comply with Monitoring and Reporting Program No. R8-2002-0011, located in Appendix 3, and any revisions thereto, which are hereby made a part of this Order"]).

[1134] Exhibit N (22), Excerpts from Santa Ana River Region, Report of Waste Discharge, April 2007, pages 3-4.

[1135] Exhibit N (22), Excerpts from Santa Ana River Region, Report of Waste Discharge, April 2007, page 3, emphasis added.

Section 12.2 of the DAMP, as referenced in the 2007 ROWD, contains a description of the long- and short-term strategies for evaluating the effectiveness of the urban runoff management program that is substantially similar to that contained in the ROWD, and lists the specific data or metrics the permittees "will track and report" under the short-term strategy for assessing program effectiveness:

> The Permittees will track and report the following data that are believed to have a positive influence on Urban Runoff and receiving water quality:
>
> - The estimated quantity of material removed from the MS4. (Regional and Permittees)
> - The estimated quantity of material collected under litter removal and street sweeping programs. (Co-Permittees)
> - The total number of construction site inspections for stormwater compliance. (Co-Permittees)
> - The total number of industrial and commercial facility inspections for stormwater compliance (Co-Permittees).
> - The quantity of household hazardous waste material collected through the HHW Collection and ABOP Programs. (Regional)
> - The number of Permittee staff receiving training for activities related to DAMP implementation. (Regional and Permittees)
> - The number of Urban Runoff complaints received through hotlines. (Regional and Permittees)
> - The number of illicit connections detected and eliminated. (Permittees)
> - Construction outreach events conducted. (Regional and Co-Permittees)
> - Industrial/Commercial outreach events conducted. (Regional and Co-Permittees);
> - Media impressions. (Regional and Co-Permittees)
> - Classroom presentations. (Regional)
> - Public education events conducted. (Regional and Co-Permittees)[1136]

Section 12.2 of the DAMP further states that the permittees "will conduct" an overall program effectiveness assessment, as follows:

> In addition to assessing the effectiveness of the various program elements, *the Permittees will conduct an assessment of the effectiveness*

[1136] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 47.

> *of their overall programs*…The legal authority and program management elements of the Permittee programs will also be considered in this assessment. Major accomplishments and changes to be implemented in the subsequent year to improve the effectiveness of the program will be included in the evaluation.[1137]

Thus, under the prior permit, the permittees had to assess their urban runoff management programs;[1138] had to assess the DAMP;[1139] had to assess the various elements of their urban runoff management programs;[1140] had to assess control measures under the IC/ID program and the DAMP;[1141] had to assess modifications to the DAMP;[1142] and had to assess compliance status with receiving water limitations as well as proposed changes to the DAMP if receiving water limitations were not fully achieved.[1143] Furthermore, the DAMP, an enforceable part of the prior permit,[1144] specified an overall program effectiveness assessment that employed both short and long term strategies (the former focused on quantitative, indirect methods of assessment and the latter focused on water quality data), and consisted of tracking data believed to have a positive influence on Urban Runoff and receiving water quality (as specified in Section 12 of the DAMP), as well as the legal authority and program management elements of the permittees' programs, and major accomplishments and changes to be implemented in the subsequent year to improve program effectiveness.[1145]

[1137] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 48, emphasis added.

[1138] Exhibit A, Test Claim, filed January 31, 2011, page 382 (Order No. R8-2002-0011, Section IV.B).

[1139] Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011, Section XIII.B).

[1140] Exhibit A, Test Claim, filed January 31, 2011, page 412 (Order No. R8-2002-0011, Section XIII.C).

[1141] Exhibit A, Test Claim, filed January 31, 2011, pages 427-428 (Order No. R8-2002-0011, Appendix 3, Section IV.B.2).

[1142] Exhibit A, Test Claim, filed January 31, 2011, pages 427-428 (Order No. R8-2002-0011, Appendix 3, Section IV.B.3).

[1143] Exhibit A, Test Claim, filed January 31, 2011, pages 427-428 (Order No. R8-2002-0011, Appendix 3, Section IV.B.8).

[1144] "The DAMP and amendments thereto are hereby made an enforceable part of this Order." Exhibit A, Test Claim, filed January 31, 2011, page 413 (Order No. R8-2002-0011).

[1145] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 47-48.

b. Section XVII.A.3 of the test claim permit imposes a state-mandated new program or higher level of service to develop and include in the first annual report a proposal to assess the effectiveness of the urban runoff management program on an area-wide and jurisdiction-specific basis at the six outcome levels using specific guidance developed by the California Storm Water Quality Association (CASQA).

Section XVII.A.3 of the test claim permit, as pled, states as follows:

> A. [relevant portions] In addition, the first Annual Report (November 2010) after adoption of this Order shall include the following:
>
> [¶]
>
> 3. Proposal for assessment of Urban Runoff management program effectiveness on an area wide as well as jurisdiction-specific basis. Permittees shall utilize the CASQA Guidance for developing these assessment measures at the six outcome levels. The assessment measures must target both water quality outcomes and the results of municipal enforcement activities consistent with the requirements of Appendix 3, Section IV.B.[1146]

Section XVII.A.3 requires the permittees to perform the one-time activity of developing and including in the November 2010 annual report *a proposal* for assessing the effectiveness of the urban runoff management program on an area wide as well as jurisdiction-specific basis that includes assessment measures that target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B. Section XVII.A.3 specifies that in developing the proposed assessment measures, the permittees must "utilize" a specific publication ("CASQA [California Stormwater Quality Association], May 2007, *Municipal Storm Water Program Effectiveness Assessment Guidance*"), and must develop the assessment measures "at the six outcome levels."

A later iteration of the referenced publication – *Municipal Storm Water Program Effectiveness Assessment Guidance* – explains that a 2007 law (Stats. 2007, ch. 610, AB 739) required the State and Regional Boards to utilize the CASQA Guidance publication when establishing assessment requirements for programs and permits.

> Reissued California Phase I and Phase II municipal stormwater permits are also increasingly reflective of the 2007 CASQA Guidance, in large part due to the March 2011 release of the *Guidance for Assessing the Effectiveness of Municipal Storm Water Programs and Permits* by the State Water Resources Control Board. California Assembly Bill 739 (Laird, 2007) required the SWRCB to develop this guidance in accordance with the general effectiveness assessment principles established through CASQA, and *required the SWRCB and Regional Water Quality Control*

[1146] Exhibit A, Test Claim, filed January 31, 2011, pages 60 (Test Claim narrative), 235 (test claim permit, Section XVII.A.3).

Boards to utilize the document when establishing assessment requirements for programs and permits.[1147]

As relevant here, Statutes 2007, chapter 610 (AB 739) added Water Code section 13383.7 to require the State Water Board to develop a comprehensive guidance document for evaluating the effectiveness of urban runoff management programs, which promotes the use of quantifiable evaluation measures, and to refer to the guidance document when establishing requirements in MS4 permits.[1148]

[1147] Exhibit N (10), Excerpts from CASQA, A Strategic Approach to Planning for and Assessing the Effectiveness of Stormwater Programs, February 2015, page 2. This document is an updated version of the Municipal Storm Water Program Effectiveness Assessment Guidance, which was first published in 2007 and is referenced in the test claim permit. The administrative record for the test claim permit does not contain a copy of the Guidance, and an electronic version could not be located. Accordingly, the 2015 version is referenced herein.

[1148] Water Code section 13383.7 (Stats. 2007, ch. 610 (AB 739)), which states the following:

> (a) No later than July 1, 2009, and after holding public workshops and soliciting public comments, *the state board shall develop a comprehensive guidance document for evaluating and measuring the effectiveness of municipal stormwater management programs* undertaken, and permits issued, in accordance with Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) and this division.
>
> (b) For the purpose of implementing subdivision (a), *the state board shall promote the use of quantifiable measures for evaluating the effectiveness of municipal stormwater management programs* and provide for the evaluation of, at a minimum, all of the following:
>
> (1) Compliance with stormwater permitting requirements, including all of the following:
>
> (A) Inspection programs.
>
> (B) Construction controls.
>
> (C) Elimination of unlawful discharges.
>
> (D) Public education programs.
>
> (E) New development and redevelopment requirements.
>
> (2) Reduction of pollutant loads from pollution sources.
>
> (3) Reduction of pollutants or stream erosion due to stormwater discharge.
>
> (4) Improvements in the quality of receiving water in accordance with water quality standards.

The CASQA Guidance publication proposes "outcomes" as the building blocks for assessing the effectiveness of a stormwater management program.[1149] Outcomes are grouped into six categories, or outcome levels, representing a general progression from one to six in a causal relationship sequence. In other words, the conditions at one level may influence the conditions at the next sequential level and so on. "For example, knowledge and awareness (Level 2) in target audiences will likely influence their behaviors (Level 3)."[1150] During planning and assessment, the six outcome levels are typically addressed in reverse order to work backwards from measured or observed effects to possible causes.

While Section XVII.A.3 does not define what is meant by the "six targeted outcomes" beyond reference to the CASQA Guidance publication, the test claim permit's glossary contains definitions for six levels of "effectiveness assessment outcomes," as follows:

- **Effectiveness Assessment Outcome Level 1** - Compliance with Activity-based Permit Requirements - Level 1 outcomes are those directly related to the implementation of specific activities prescribed by this Order or established pursuant to it.
- **Effectiveness Assessment Outcome Level 2** - Changes in Attitudes, Knowledge, and Awareness - Level 2 outcomes are measured as increases in knowledge and awareness among target audiences such as residents, businesses, and municipal employees.
- **Effectiveness Assessment Outcome Level 3** - Behavioral Change and BMP Implementation - Level 3 outcomes measure the effectiveness of activities in affecting behavioral change and BMP implementation.
- **Effectiveness Assessment Outcome Level 4** - Load Reductions - Level 4 outcomes measure load reductions which quantify changes in the amounts of pollutants associated with specific sources before and after a BMP or other control measure is employed.
- **Effectiveness Assessment Outcome Level 5** - Changes in Urban Runoff and Discharge Quality - Level 5 outcomes are measured as changes in one or more specific constituents or stressors in discharges into or from MS4s.

(c) The state board and the regional boards shall refer to the guidance document developed pursuant to subdivision (a) when establishing requirements in municipal stormwater programs and permits.

[1149] Exhibit N (10), Excerpts from CASQA, A Strategic Approach to Planning for and Assessing the Effectiveness of Stormwater Programs, February 2015, page 4.

[1150] Exhibit N (10), Excerpts from CASQA, A Strategic Approach to Planning for and Assessing the Effectiveness of Stormwater Programs, February 2015, page 4.

- **Effectiveness Assessment Outcome Level 6** - Changes in Receiving Water Quality - Level 6 outcomes measure changes to receiving water quality resulting from discharges into and from MS4s, and may be expressed through a variety of means such as compliance with water quality objectives or other regulatory benchmarks, protection of biological integrity, or beneficial use attainment.[1151]

These outcome levels are substantially similar to those set forth in the CASQA Guidance publication.[1152] Therefore, Section XVII.A.3 requires the permittees to rely on the CASQA Guidance publication to develop the proposed assessment, which must measure program effectiveness at the six effectiveness assessment outcome levels defined in Appendix 4 to the test claim permit (Glossary).

In addition, Section XVII.A.3 requires the proposed assessment measures to target both *water quality outcomes* and the *results of municipal enforcement activities*, in a manner consistent with the requirements of Appendix 3, Section IV.B. Appendix 3 is the Monitoring and Reporting Program, which the permittees are required to comply with as part of the test claim permit.[1153] Section IV.B.2 of Appendix 3 sets forth the information that the permittees are required to include in the annual report, including the following assessments:

- An assessment of the effectiveness of BMPs established under the IC/ID program and the DAMP.[1154]
- As assessment of BMPs and their effectiveness in addressing Pollutants causing or contributing to an exceedance of water quality objectives in Receiving Waters that are on the 303(d) list of impaired waters.[1155]
- An assessment of permittee compliance status with the receiving waters limitations.[1156]

[1151] Exhibit A, Test Claim, filed January 31, 2011, page 278 (test claim permit, Appendix 4 [Glossary], page 5).

[1152] Exhibit N (10), Excerpts from CASQA, A Strategic Approach to Planning for and Assessing the Effectiveness of Stormwater Programs, February 2015, page 3.

[1153] Exhibit A, Test Claim, filed January 31, 2011, page 236 (test claim permit, Section XIX ["The Permittees must comply with Monitoring and Reporting Program No. RS-2010-0033, Appendix 3, and any revisions thereto, which are hereby made a part of this Order"]).

[1154] Exhibit A, Test Claim, filed January 31, 2011, page 259 (test claim permit, Appendix 3, Section IV.B.2.b).

[1155] Exhibit A, Test Claim, filed January 31, 2011, page 259 (test claim permit, Appendix 3, Section IV.B.2.c).

[1156] Exhibit A, Test Claim, filed January 31, 2011, page 259 (test claim permit, Appendix 3, Section IV.B.2.d).

- An overall program assessment.[1157]
- An assessment of any modifications to the WQMPs, or the DAMP made to comply with CWA requirements to reduce the discharge of Pollutants to the MEP.[1158]
- An assessment of monitoring results from the previous year.[1159]
- An assessment of the effectiveness of each permittee's stormwater ordinances and enforcement practices in prohibiting non-exempt, non-stormwater discharges to the MS4.[1160]

Section IV.B.2 of Appendix 3 also sets forth criteria for measuring the effectiveness of some of these program elements, some of which are required[1161] (e.g., requiring the evaluation of BMP effectiveness in addressing pollutants that cause or contribute to an exceedance of water quality objectives in 303(d)-listed waters to consider "changes in land use and population on the quality of Receiving Waters and the impact of development on sediment loading within sediment impaired Receiving Waters") and some of which are optional ("The effectiveness *may* be measured in terms of how successful the program has been in eliminating IC/IDs and/or reducing pollutant loads in urban storm water runoff, including summaries of Permittee actions to investigate and eliminate or permit IC/IDs and measures to reduce and/or eliminate the discharge of Pollutants, including trash and debris").[1162]

Accordingly, Section XVII.A.3 of the test claim permit requires the permittees to develop a one-time proposal for assessing the effectiveness of the urban runoff management program on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance, and include the proposal in the

---

[1157] Exhibit A, Test Claim, filed January 31, 2011, pages 259-260 (test claim permit, Appendix 3, Section IV.B.2.e).

[1158] Exhibit A, Test Claim, filed January 31, 2011, page 260 (test claim permit, Appendix 3, Section IV.B.2.g).

[1159] Exhibit A, Test Claim, filed January 31, 2011, page 260 (test claim permit, Appendix 3, Section IV.B.2.h).

[1160] Exhibit A, Test Claim, filed January 31, 2011, page 260 (test claim permit, Appendix 3, Section IV.B.2.m).

[1161] Exhibit A, Test Claim, filed January 31, 2011, page 259 (test claim permit, Appendix 3, Section IV.B.2.c ["The effectiveness evaluation *shall* consider changes in land use and population on the quality of Receiving Waters and the impact of development on sediment loading within sediment impaired Receiving Waters and recommend necessary changes to program implementation and monitoring needs"], emphasis added).

[1162] Exhibit A, Test Claim, filed January 31, 2011, page 259 (test claim permit, Appendix 3, Section IV.B.2.b).

first annual report (November 2010) after the adoption of the test claim permit. The proposal must target water quality outcomes and the results of municipal enforcement activities consistent with the required assessment criteria specified in Section IV.B of Appendix 3 (the Monitoring and Reporting Program).

These requirements are new. Federal law requires the permittees to assess the controls that comprise their urban runoff management programs and to annually report on the status of implementing the program components.[1163] It does not specify how the assessment must be conducted (i.e., the metrics, methods, or measures to be used). While the prior permit required the permittees to evaluate the effectiveness of their urban runoff management programs,[1164] based on "quantitative, but indirect methods" of assessment, as well as water quality data,[1165] the ROWD makes clear that the program effectiveness assessment under the prior permit did not yet include "specific… requirements for all effectiveness assessment metrics," i.e., measuring program effectiveness using targeted outcome levels.[1166] Nor did the prior permit specify effectiveness assessment outcome levels akin to the six levels defined in the test claim permit.

Therefore, the one-time requirements to develop and include in the first annual report a proposal to assess the effectiveness of the urban runoff management program on an area-wide and jurisdiction-specific basis at the six outcome levels using specific guidance developed by the California Storm Water Quality Association (CASQA), are new.

In addition, these one-time requirements are mandated by the state and impose a new program or higher level of service.

To determine whether certain conditions imposed by an NPDES permit are mandated by the state or federal government, the 2016 California Supreme Court decision of *Department of Finance v. Commission on State Mandates* identified the following test:

> If federal law compels the state to impose, or itself imposes, a requirement, that requirement is a federal mandate. On the other hand, if federal law gives the state discretion whether to impose a particular implementing requirement, and the state exercises its discretion to impose

[1163] Code of Federal Regulations, title 40, sections 122.26(d)(2)(v), 122.42(c).

[1164] Exhibit A, Test Claim, filed January 31, 2011, pages 382 (Order No. R8-2002-0011, Section IV.B), 412 (Order No. R8-2002-0011, Sections XIII.A, XIII.C), 427-428 (Order No. R8-2002-0011, Appendix 3, Sections IV.B.2, IV.B.3, IV.B.8).

[1165] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, pages 47-48.

[1166] Exhibit N (22), Excerpts from Santa Ana River Region, Report of Waste Discharge, April 2007, page 4.

> the requirement by virtue of a "true choice," the requirement is not federally mandated.[1167]

In this, the Commission is not required to defer to the Regional Board's determinations on what is required to be included in the permit unless the Regional Board has made findings that the disputed permit terms are the only means by which MEP can be satisfied.[1168] Thus, where the state exercises discretion to impose a requirement, the requirement is not federally mandated.[1169]

The Regional Board argues that the requirements in Section XVII.A.3 are necessary to comply with federal law because the iterative approach "must include the review and assessment of current controls, programs, and compliance mechanisms to determine effectiveness and efficiency in reducing pollutants."[1170] Federal law, however, gives the state discretion to determine what controls are necessary to meet the MEP standard, and does not require the permittees to develop a proposal for assessing management program effectiveness using CASQA Guidelines. Moreover, there is no evidence in the record that the newly required activities are the only means by which the federal MEP standard can be met. Thus, the new activities required by Section XVII.A.3 are mandated by the state.

Moreover, the requirements impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.[1171] The new requirements imposed by Section XVII.A.3 are expressly directed toward the local agency permittees, and thus, are unique to government.[1172] "The challenged requirements are not bans or limits on pollution levels, they are mandates to perform specific actions" designed to reduce the discharge of pollutants into the MS4 to the MEP, and prevent runoff discharges from the MS4 from causing or contributing to a

---

[1167] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[1168] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 768 ("Had the Regional Board found, when imposing the disputed permit conditions, that those conditions were the only means by which the maximum extent practicable standard could be implemented, deference to the board's expertise in reaching that finding would be appropriate").

[1169] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 765.

[1170] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 43.

[1171] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

[1172] See *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 559–560 (finding that a NPDES permit issued by the Regional Water Quality Control Board, Los Angeles Region applies by its terms only to the local governmental entities identified in the permit).

violation of water quality standards.[1173] Therefore, the new requirements also carry out the governmental function of providing services to the public.

Accordingly, Section XVII.A.3 of the test claim permit imposes a state-mandated new program or higher level of service on the permittees to perform the following one-time activities:

- Develop and include in the first annual report (November 2010) after the adoption of the test claim permit a proposal for assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance. The assessment measures are required to target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B.[1174]

    c. Section XVII.A.3 does not require the permittees to implement the proposal when annually evaluating the effectiveness of the urban runoff management program.

As indicated above, both federal law and the prior permit require the permittees to perform an annual program effectiveness evaluation.[1175] The claimants assert that Section XVII.A.3 requires them to implement the program effectiveness assessment proposal when performing this evaluation.[1176]

The plain language of Section XVII.A.3. does not require implementation of the proposal. The only verbs in that provision are to develop and include in the first annual report.[1177] To the extent the claimants believe the language in Section XVII.A.3. is arbitrary, applying the rules of statutory construction supports the interpretation that implementation of the proposal is not required by the permit. Statutes are not to be interpreted in isolation, but must be interpreted in the context of the law of which it is a part.[1178] Here, the plain language of Section XVII.A (of which Section XVII.A.3. is a part) requires that the annual evaluations be consistent with the reporting requirements

---

[1173] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 560; United States Code, title 33, section 1342(p)(3)(B)(iii) (Public Law 100-4).

[1174] Exhibit A, Test Claim, filed January 31, 2011, page 235 (test claim permit, Section XVII.A.3).

[1175] Code of Federal Regulations, title 40, sections 122.26(d)(2)(v), 122.42(c); Exhibit A, Test Claim, filed January 31, 2011, pages 382 (Order No. R8-2002-0011, Section IV.B), 412 (Order No. R8-2002-0011, Sections XIII.A, XIII.C), 427-428 (Order No. R8-2002-0011, Appendix 3, Sections IV.B.2, IV.B.3, IV.B.8).

[1176] Exhibit A, Test Claim, filed January 31, 2011, page 61 (Test Claim narrative).

[1177] Exhibit A, Test Claim, filed January 31, 2011, page 235 (test claim permit, Section XVII.A.3).

[1178] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261.

in Appendix 3, Section IV.B. The reporting requirements in Appendix 3, Section IV.B encourage the use of the program assessment methodology, but do not require it:

> At a minimum, the Annual Report shall include the following:
>
> [¶]…[¶]
>
> An overall program assessment. The Permittees are *encouraged* to use the program assessment methodology described in the 2007 ROWD. The Permittees *should* determine, to the extent practicable, water quality improvements and Pollutant load reductions resulting from implementation of various program elements. The Permittees *may* also use the "Municipal Storm Water Program Effectiveness Assessment Guidance" developed by CASQA in May 2007 as guidance for assessing program effectiveness at various outcome levels. The assessment *should* include each program element required under this Order, the expected outcome and the measures used to assess the outcome. The Permittees *may* propose any other methodology for program assessment using measurable targeted outcomes.[1179]

Accordingly, based on the plain language of Section XVII.A.3., and interpreted in light of the whole permit, the Commission finds that Section XVII.A.3 does not require the permittees to implement the proposal when annually evaluating the effectiveness of the urban runoff management program.[1180]

C. <u>The Test Claim Permit Imposes Costs Mandated by the State for the County and Cities for Those New State-Mandated Activities Not Subject to Government Code Section 17556(d), from January 29, 2010, to December 31, 2017. There Are No Costs Mandated by the State for Riverside County Flood and Water Conservation District Because There Is No Evidence in the Record that the District Was Forced to Spend Their Local "Proceeds of Taxes."</u>

As indicated above, the following activities constitute mandated new programs or higher levels of service:

A. Local Implementation Plans

1. Within six months of adoption of the test claim permit, the permittees shall develop a LIP template and submit for approval of the executive officer. The LIP template shall be amended as the provisions of the DAMP are amended to address the requirements of the test claim permit. The LIP template shall facilitate a description of the co-permittee's individual programs to implement the

[1179] Exhibit A, Test Claim, filed January 31, 2011, page 259-260 (test claim permit, Appendix 3, Section IV.B.2.e).

[1180] In comments on the Draft Proposed Decision, the claimants state that they agree with the conclusions regarding the state-mandated activities imposed by Section XVII.A.3 of the test claim permit. Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 28.

DAMP, including the organizational units responsible for implementation and identify positions responsible for urban runoff program implementation. The description shall specifically address the items enumerated in Sections IV.A.1 through IV.A.12 of the test claim permit (Section IV.A).[1181]

2. Within 12 months of approval of the LIP template, and amendments thereof, by the executive officer, each permittee shall complete a LIP, in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of the test claim permit (Section IV.B).[1182]
3. Revise the LIP as necessary, following an annual review and evaluation of the effectiveness of the urban runoff programs, in compliance with Section VIII.H of the test claim permit (Section IV.C).[1183]
4. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board (Section VI.D.1.a.vii).[1184]
5. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no more than 180 days after the CBRP is approved by the Regional Board (Section VI.D.1.c.i(8)).[1185]
6. Lake Elsinore/Canyon Lake permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon Lake (San

---

[1181] Exhibit A, Test Claim, filed January 31, 2011, pages 178-180 (test claim permit, Section IV.A).

[1182] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.B).

[1183] Exhibit A, Test Claim, filed January 31, 2011, page 181 (test claim permit, Section IV.C).

[1184] Exhibit A, Test Claim, filed January 31, 2011, page 186 (test claim permit, Section VI.D.1.a.vii).

[1185] Exhibit A, Test Claim, filed January 31, 2011, page 187 (test claim permit, Section VI.D.1.c.i(8)).

Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit. (Section VI.D.2.c).[1186]

7. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for the nutrients TMDL in the San Jacinto Watershed, no more than 180 days after the CNRP is approved by the Regional Board (Section VI.D.2.d.ii(d)).[1187]
8. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f of the test claim permit (Section VI.D.2.i).[1188]
9. The LIPs must be designed to achieve compliance with receiving water limitations associated with discharges of urban runoff to the MEP (Section VII.B).[1189]
10. Within 30 days following approval by the executive officer of the report described in Section VII.D.1 of the test claim permit, the permittees shall revise the applicable LIPs to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required (Section VII.D.2).[1190]

[1186] Exhibit A, Test Claim, filed January 31, 2011, page 190 (test claim permit, Section VI.D.2.c; Section VI.D.2.i. also requires the permittees to revise the LIP as necessary to implement the interim WQBEL compliance plans pursuant to Sections VI.D.2.a and b).

[1187] Exhibit A, Test Claim, filed January 31, 2011, page 191 (test claim permit, Section VI.D.2.d.ii(d)).

[1188] Exhibit A, Test Claim, filed January 31, 2011, page 192 (test claim permit, Section VI.D.2.i).

[1189] Exhibit A, Test Claim, filed January 31, 2011, page 193 (test claim permit, Section VII.B).

[1190] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.2).

11. The permittees shall incorporate their enforcement programs into the LIPs (Section VIII.A).[1191]
12. The permittees shall update the LIPs following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit (Section VIII.H).[1192]
13. The permittees shall describe their procedures and authorities for managing illegal dumping in the LIPs (Section IX.C).[1193]
14. The permittees shall update the LIPs following their review of and revisions to their IC/ID programs to include a proactive IDDE program, as set forth in Section IX.D of the test claim permit (Section IX.D).[1194]
15. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose (Section XII.A.1).[1195]
16. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:
    a. The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.
    b. A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.
    c. Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.

[1191] Exhibit A, Test Claim, filed January 31, 2011, page 195 (test claim permit, Section VIII.A).

[1192] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section VIII.H).

[1193] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section IX.C).

[1194] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[1195] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.1).

d. Training for those involved with WQMP reviews in accordance with Section XV of the test claim permit (Training Requirements) (Section XII.H).[1196]

17. Each permittee shall include in its LIP the inspection and cleaning frequency for all portions of its MS4 (Section XIV.D).[1197]

18. Within 24 months of adoption of the test claim permit, each permittee shall update their LIP to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit (Section XV.A).[1198]

B. Proactive Illicit Discharge Detection and Elimination Program

1. Within 18 months of adoption of the test claim permit, review and revise the IC/ID program to include a proactive illicit discharge detection and elimination program, using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program, consistent with Section IX.E of the test claim permit (Section IX.D).[1199]

2. Report the result of the review required by Section IX.D of the test claim permit in the annual report and include a description of the permittees' revised proactive illicit discharge detection and elimination program, procedures and schedules (Section IX.D).[1200]

3. *Except* for those responses that result in an enforcement action, maintain a database summarizing IC/ID incident response, including IC/IDs detected as part of field monitoring activities (Section IX.H).[1201]

4. Review and update the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge

---

[1196] Exhibit A, Test Claim, filed January 31, 2011, page 224 (test claim permit, Section XII.H).

[1197] Exhibit A, Test Claim, filed January 31, 2011, page 229 (test claim permit, Section XIV.D).

[1198] Exhibit A, Test Claim, filed January 31, 2011, pages 231-232 (test claim permit, Section XV.A).

[1199] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[1200] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[1201] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

Detection and Elimination by the Center for Watershed Protection or any other equivalent program (Appendix 3, Section III.E).[1202]

5. Establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring location using dry weather monitoring for nitrogen and total dissolved solids (Appendix 3, Section III.E).[1203] *However, monitoring for total dissolved solids and total inorganic nitrogen is not a new requirement.*

C. Septic System Database

1. The County of Riverside shall maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008 (Section X.D).[1204]

D. Commercial Facility Inspections

1. Within 18 months of adoption of the test claim permit, the co-permittees shall identify any facilities that transport, store or transfer pre-preproduction plastic pellets and managed turf facilities (e.g. private golf courses, athletic fields, cemeteries, and private parks) and determine if these facilities warrant additional inspection to protect water quality (Section XI.D.1).[1205]
2. Within 24 months of adoption of the test claim permit, the co-permittees shall develop an enforcement strategy to address mobile businesses (Section XI.D.7).[1206]

E. Watershed Action Plan

1. Within three years of adoption of the test claim permit, the permittees shall develop and submit to the Executive Officer for approval a Watershed Action Plan and implementation tools that describes and implements the permittees' approach to coordinated watershed management (Sections XII.B.1, 2, and 3).[1207] At a minimum, the Watershed Action Plan shall include the following:

[1202] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[1203] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[1204] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

[1205] Exhibit A, Test Claim, filed January 31, 2011, page 204 (test claim permit, Section XI.D.1).

[1206] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

[1207] Exhibit A, Test Claim, filed January 31, 2011, pages 209-210 (Sections XII.B.1, 2, and 3).

a. Description of proposed regional BMP approaches that will be used to address urban TMDL WLAs.

b. Development of recommendations for specific retrofit studies of MS4, parks and recreational areas that incorporate opportunities for addressing TMDL implementation plans, hydromodification from urban runoff and LID implementation.

c. Description of regional efforts that benefit water quality (e.g. Western Riverside County Multiple Species Habitat Conservation Plan, TMDL Task Forces, Water Conservation Task Forces, Integrated Regional Watershed Management Plans) and their role in the Watershed Action Plan. The permittees shall describe how these efforts link to their urban runoff programs and identify any further coordination that should be promoted to address urban WLA or hydromodification from urban runoff to the MEP (Section XII.B.3).[1208]

2. Within two years of adoption of the test claim permit, the permittees shall delineate existing unarmored or soft-armored stream channels in the permit area that are vulnerable to hydromodification from new development and significant redevelopment projects (Section XII.B.4).[1209]

3. Within two years of completion of the channel delineation in Section XII.B.4 of the test claim permit, develop a Hydromodification Management Plan (HMP) describing how the delineation will be used on a per project, sub-watershed, and watershed basis to manage Hydromodification caused by urban runoff. The HMP shall prioritize actions based on drainage feature/susceptibility/risk assessments and opportunities for restoration.

   a. The HMP shall identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis.

   b. Develop and implement a HMP to evaluate Hydromodification impacts for the drainage channels deemed most susceptible to degradation. The HMP will identify sites to be monitored, include an assessment methodology, and required follow-up actions based on monitoring results. Where applicable, monitoring sites may be used to evaluate the effectiveness of BMPs in preventing or reducing impacts from Hydromodification (Section XII.B.5).[1210]

4. Identify impaired waters [CWA § 303(d) listed] with identified urban runoff pollutant sources causing impairment, existing monitoring programs addressing those pollutants, any BMPs that the permittees are currently implementing, and any BMPs the permittees are proposing to implement consistent with the other requirements of this Order. Upon completion of the channel delineation, develop

[1208] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.3).

[1209] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.4).

[1210] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.5).

a schedule to implement an integrated, world-wide-web available, regional geodatabase of the impaired waters, MS4 facilities, critical habitat preserves defined in the Multiple Species Habitat Conservation Plan and stream channels in the permit area that are vulnerable to hydromodification from urban runoff (Section XII.B.6).[1211]

5. Develop a schedule to maintain the watershed geodatabase and other available and relevant regulatory and technical documents associated with the Watershed Action Plan (Section XII.B.7).[1212]
6. Within three years of adoption of the test claim permit, the permittees shall submit the Watershed Action Plan to the Executive Officer for approval and incorporation into the Drainage Area Management Plan (DAMP). Within six months of approval, each permittee shall implement applicable provisions of the approved revised DAMP and incorporate applicable provisions of the revised DAMP into the LIPs for watershed wide coordination of the Watershed Action Plan (Section XII.B.8).[1213]
7. The permittees shall also incorporate Watershed Action Plan training, as appropriate, including training for upper-level managers and directors into the training programs described in Section XV of the test claim permit. The co-permittees shall also provide outreach and education to the development community regarding the availability and function of appropriate web-enabled components of the Watershed Action Plan (Section XII.B.9).[1214]
8. Invite participation and comments from resource conservation districts, water and utility agencies, state and federal agencies, non-governmental agencies and other interested parties in the development and use of the watershed geodatabase (Section XII.B.10).[1215]

F. Employee Training

1. Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to project specific WQMP review on the following:
    a. Review and approval of project-specific WQMPs.
    b. Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality.
    c. Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP.

[1211] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.6).

[1212] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.7).

[1213] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.8).

[1214] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.9).

[1215] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.10).

d. Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit (Section XVC).[1216]

2. Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for implementing the requirements of the test claim order related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers); define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Section XV.C).[1217]

3. New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Section XV.F.1).[1218]

4. Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive formal training at least once during the term of the test claim permit (Section XV.F.4).[1219]

5. Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit relating to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Section XV.F.5).[1220]

G. Urban Runoff Management Program Effectiveness Assessment

1. Develop and include in the first annual report (November 2010) after the adoption of the test claim permit a proposal for assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance. The

---

[1216] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1217] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1218] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.1).

[1219] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.4).

[1220] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5).

assessment measures are required to target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B (Section XVII.A.3).[1221]

Additionally, as indicated above, the claimants have pled the following **regulatory activities governing new development and significant redevelopment** other than their own municipal projects, that are required by Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4 and 6-9, XII.F.1, XII.F.2, XII.G.1, and XII.K.4-5 of the test claim permit, which may mandate a new program or higher level of service:

- Ensure that appropriate BMPs to reduce erosion and mitigate hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP;[1222]
- Review, and if required, amend, each permittee's general plan and related documents (e.g., development standards, zoning codes, conditions of approval) to eliminate barriers to implementation of LID principles and hydrologic conditions of concern, and reflect any changes to the project approval process or procedures in the LIP;[1223]
- Submit a revised WQMP to incorporate the new elements required in the test claim permit;[1224]
- Perform the following low impact development (LID) and hydromodification management activities:
    - Update and implement the WQMP to address LIP principles and hydrologic conditions of concern;[1225]
    - Require non-municipal development projects to infiltrate, harvest and use, evapotranspire, and/or bio-treat the 85th percentile storm event; however, to the extent that entire volume cannot be captured, treat and discharge that portion of the volume in compliance with permit requirements;[1226]

[1221] Exhibit A, Test Claim, filed January 31, 2011, page 235 (test claim permit, Section XVII.A.3).

[1222] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.5).

[1223] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.C.1).

[1224] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1).

[1225] Exhibit A, Test Claim, filed January 31, 2011, page 217 (test claim permit, Section XII.E.1).

[1226] Exhibit A, Test Claim, filed January 31, 2011, page 217 (test claim permit, Section XII.E.2).

- Incorporate LID site design principles into the revised WQMP, and require non-municipal development projects to include site design BMPs during the development of the project-specific WQMP;[1227]
- Revise ordinances, codes, and design standards to promote LID techniques;[1228]
- Implement education programs to educate property owners of new development and significant redevelopment projects to use pollution prevention BMPs and to maintain landscape controls;[1229]
- Specify in the revised WQMP the preferential use of site design BMPs that incorporate LID techniques, where feasible, and prioritize the mitigation or structural site design BMPs;[1230]
- Continue to ensure through the WQMP review and approval process that non-municipal development projects do not pose a hydrologic condition of concern, and if a hydrologic condition of concern exists, evaluate whether adverse impacts are likely to occur and if so, require the project proponent to implement additional BMPs to mitigate the impacts;[1231]

- Develop standard design and post-development BMP guidance to be incorporated into projects for streets, roads, highways, and freeway improvements, under the jurisdiction of the co-permittees to reduce the discharge of pollutants from the projects to the MEP, and submit the draft guidance to the executive officer for review and approval;[1232]
- Implement the approved standard design and post-development BMP guidance for all road projects;[1233]
- Develop criteria for non-municipal development project evaluation to determine the feasibility of implementing LID BMPs;[1234] and

---

[1227] Exhibit A, Test Claim, filed January 31, 2011, pages 217-218 (test claim permit, Section XII.E.3).

[1228] Exhibit A, Test Claim, filed January 31, 2011, pages 218-219 (test claim permit, Section XII.E.4).

[1229] Exhibit A, Test Claim, filed January 31, 2011, page 219 (test claim permit, Section XII.E.6).

[1230] Exhibit A, Test Claim, filed January 31, 2011, pages 219-220 (test claim permit, Sections XII.E.7 and XII.E.8).

[1231] Exhibit A, Test Claim, filed January 31, 2011, pages 220-221 (test claim permit, Section XII.E.9).

[1232] Exhibit A, Test Claim, filed January 31, 2011, pages 221-222 (test claim permit, Section XII.F.1).

[1233] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.F.2).

- Maintain a database to track the operation and maintenance of structural post-construction BMPs installed after adoption of the test claim permit;[1235] and
- Develop an inspection frequency for non-municipal new development and significant redevelopment projects, based on the project type and the type of structural post construction BMPs deployed.[1236]

The last issue in determining whether reimbursement is required under article XIII B, section 6 is whether the new mandated activities result in increased costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as any increased costs that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim nor payment shall be made unless the claim exceeds $1,000. Increased costs mandated by the state requires a showing of "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[1237]

In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim. As relevant here, Government Code section 17556(d) states that the Commission shall *not* find costs mandated by the state when:

> The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

The claimants contend that the activities result in increased costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514, with increased costs of $1,251,773.82 in FY 2010-11 and $1,879,234.86 in FY 2011-12. For the state mandated activities and the new development and significant redevelopment project activities, the breakdown of costs is generally as follows:

Alleged Requirement(s)	Fiscal Year 2010-11 Costs	Fiscal Year 2011-12 Costs

[1234] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.G.1).

[1235] Exhibit A, Test Claim, filed January 31, 2011, page 225 (test claim permit, Section XII.K.4).

[1236] Exhibit A, Test Claim, filed January 31, 2011, pages 225-226 (test claim permit, Section XII.K.5).

[1237] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

Alleged Requirement(s)	Fiscal Year 2010-11 Costs	Fiscal Year 2011-12 Costs
Local Implementation Plan	$11,355.44[1238]	$25,279.87[1239]
Creation of Septic System Database	$5,000 (County only)[1240]	$5,000 (County only)[1241]
Enhanced Permittee Inspection Requirements	$105,768.35[1242]	$107,781.62[1243]
Enhanced New Development Requirements	$140,756.39[1244]	$268,083.97[1245]
Training Program Enhancement	$127,072.68[1246]	$164,133.99[1247]
Program Management Assessment	$23,881.35[1248]	$39,740.64[1249]
TOTAL	**$413,834.21**	**$610,020.09**

Although the claimants agree that some permittees have access to a Riverside County stormwater fund, to fuel tax and community services revenue, to lighting and maintenance revenues and development fees, and the Riverside County Flood and Water Conservation District has access to a Benefit Assessment for stormwater costs, the claimants contend that these funding sources do not cover the entire cost of

[1238] Exhibit A, Test Claim, filed January 31, 2011, page 39 (Test Claim narrative).

[1239] Exhibit A, Test Claim, filed January 31, 2011, page 39 (Test Claim narrative).

[1240] Exhibit A, Test Claim, filed January 31, 2011, page 44 (Test Claim narrative)

[1241] Exhibit A, Test Claim, filed January 31, 2011, page 44 (Test Claim narrative).

[1242] Exhibit A, Test Claim, filed January 31, 2011, page 46 (Test Claim narrative).

[1243] Exhibit A, Test Claim, filed January 31, 2011, page 46 (Test Claim narrative).

[1244] Exhibit A, Test Claim, filed January 31, 2011, page 58 (Test Claim narrative). The claimants do not break down costs for new development and significant redevelopment activities by costs incurred by a municipality as a project proponent versus costs incurred in a regulatory capacity for development projects other than those proposed by the permittees.

[1245] Exhibit A, Test Claim, filed January 31, 2011, page 58 (Test Claim narrative).

[1246] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

[1247] Exhibit A, Test Claim, filed January 31, 2011, page 60 (Test Claim narrative).

[1248] Exhibit A, Test Claim, filed January 31, 2011, page 61 (Test Claim narrative).

[1249] Exhibit A, Test Claim, filed January 31, 2011, page 61 (Test Claim narrative).

compliance with the provisions set forth in this test claim.[1250] Therefore, the claimants conclude that Government Code section 17556(d) does not apply to deny the test claim.[1251]

The Regional Board alleges that the test claim permit does not result in increased costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of the program and, thus, Government Code section 17556(d) applies to deny the test claim.[1252] They argue that the claimants have failed to show that they must use their tax monies to pay for the required activities under the test claim permit; that all of the claimants have the ability to charge fees to businesses to cover inspection costs; and that "cities and counties can and do adopt fees from their residents and businesses that fund their stormwater programs."[1253]

As explained below, the Commission finds that:

1. The new state-mandated activities do not result in costs mandated by the state for Riverside County Flood and Water Conservation District because there is no evidence in the record that the District was forced to spend its "proceeds of taxes," but instead used assessment revenue and contract funds from the County and cities, which are not subject to the District's appropriations limit.
2. There is substantial evidence in the record that the County and cities incurred costs exceeding $1,000 and used proceeds of taxes to comply with the test claim permit. Declarations filed by the County and cities show that they have incurred shared costs and individual direct costs exceeding the $1,000 threshold to comply with the test claim permit, and there is no evidence in the record to rebut that.[1254]

[1250] Exhibit A, Test Claim, filed January 31, 2011, pages 62, 70, 78, 89-90, 96, 101-102, 108, 120-121 (Test Claim narrative).

[1251] Exhibit A, Test Claim, filed January 31, 2011, pages 32, 62 (Test Claim narrative).

[1252] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 19.

[1253] Exhibit C, Regional Board's Comments on the Test Claim, filed August 26, 2011, page 19.

[1254] Exhibit A, Test Claim, filed January 31, 2011, pages 83-84 (Declaration from City of Beaumont employee, stating that the only funding source available is the City's General Fund revenues), 89-90 (Declaration from City of Corona employee, discussing use of County Service Area 152 funds and General Fund revenues), 96 (Declaration from City of Hemet employee, discussing use of "sewer and storm drain fee" to pay for some but not all of test claim permit activities and General Fund revenues), 101-102 (Declaration from City of Lake Elsinore employee, discussing use of County Service Area 152 funds and General Fund revenues), 108 (Declaration from City of Moreno Valley employee, discussing use of County Service Area 152 funding, funds collected from new developments pursuant to an NPDES rate schedule, and General Revenue funds), 114-115 (Declaration from City of Perris employee, discussing use of City's General Fund

3. Pursuant to Government Code section 17556(d), the County and cities have regulatory fee authority sufficient as a matter of law to fund the new state-mandated activities related to commercial facilities inspections (Sections XI.D.1 and XI.D.7), requirements to regulate new development and significant redevelopment projects including LID and hydromodification management for those projects (Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4, XII.E.6-9, XII.F.1, XII.F.2, and XII.G.1.), and structural post-construction BMP tracking (Sections XII.K.4 and XII.K.5) and, thus, there are no costs mandated by the state for these activities.[1255] However, the County and Cities do not have fee authority to pay for the Watershed Action Plan (Section XII.B).

4. The County and cities have constitutional and statutory authority to charge property-related fees for the new state-mandated requirements related to Local Implementation Plans (Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A); the proactive illicit discharge detection and elimination program (Sections IX.D, IX.E, IX.H, and Appendix 3, Section III.E.3); the septic system database (Section X.D); the Watershed Action Plan (Section XII.B); employee training (Sections XV.C, XV.F.1, XV.F.4, and XV.F.5), and urban runoff management program assessment (Section XVII.A.3).

   However, from January 29, 2010 (the beginning of the potential reimbursement period) to December 31, 2017, these fees are subject to the voter approval requirement in article XIII D, section 6(c) and therefore fee authority is not sufficient as a matter of law to fund the costs of the mandated activities.[1256] Under these limited circumstances, Government Code section 17556(d) does not apply, and there are costs mandated by the state.[1257] Any fee revenues received

---

revenues), 120-121 (Declaration from City of San Jacinto employee, discussing use of County Service Area 152 funds, Landscape and Lighting Park District fees, and General Fund revenues).

[1255] California Constitution, article XI, section 7; Government Code sections 37101 ("The legislative body may license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city") and 66001 (fees for development of real property); Health and Safety Code section 5471 (fees for storm drainage maintenance and operation); Government Code sections 38902 (providing for sewer standby charges); 53750 et seq. (Proposition 218 Omnibus Implementation Act, describing procedures for adoption of assessments, fees and charges); 53751 (as amended in 2017, providing that fees for sewer services includes storm sewers).

[1256] See *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351, and *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581.[1256]

[1257] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581; Government Code sections 57350 and 57351 (SB 231, eff.

must be identified as offsetting revenue. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, other state funds, and other funds that are not the claimant's proceeds of taxes shall be identified and deducted from this claim.

On or after January 1, 2018, there are no costs mandated by the state to comply with these activities because the claimants have constitutional and statutory authority to charge property-related fees for these costs subject only to the voter protest provisions of article XIII D, which is sufficient as a matter of law to cover the costs of the mandated activities within the meaning of Government Code section 17556(d).[1258]

1. The New State-Mandated Activities Do Not Result in Costs Mandated by the State for Riverside County Flood and Water Conservation District Because There Is No Evidence in the Record That the District Was Forced to Spend Its Local "Proceeds of Taxes."

Although the record shows the County and cities used proceeds of taxes to comply with the test claim permit and incurred $1,000 in costs,[1259] there is no evidence in the record that the District was forced to spend its own "proceeds of taxes" and instead used assessment revenue and funds received from the County and city claimants.

The reimbursement requirement in article XIII B, section 6 was included because of the tax and spend limitations in articles XIII A and XIII B, and is triggered only when the state forces the expenditure of local proceeds of taxes; section 6 was not intended to reach beyond taxation or to protect nontax sources.

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A reduced the authority of local government to impose property taxes by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property," and that the one percent tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[1260] In addition to limiting the property tax, section 4

January 1, 2018, which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351); *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

[1258] See *Paradise Irrigation District* case and Government Code sections 57350 and 57351 (which overturned *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal.App.4th 1351).

[1259] See for example, Exhibit A, Test Claim, filed January 31, 2011, pages 73-121 (Declarations from employees of the County of Riverside, and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, identifying General Fund revenues as a funding source), and the analysis in the next section.

[1260] California Constitution, article XIII A, section 1 (effective June 7, 1978).

also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[1261]

Article XIII B was adopted by the voters as Proposition 4, less than 18 months after the addition of article XIII A to the California Constitution, and was billed as "the next logical step to Proposition 13."[1262] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[1263] "Proceeds of taxes," in turn, includes "all tax revenues," as well as proceeds from "regulatory licenses, user charges, and user fees to the extent those proceeds *exceed* the costs reasonably borne by that entity in providing the regulation, product, or service," and proceeds from the investment of tax revenues.[1264] And, with respect to local governments, the section reiterates that "proceeds of taxes" includes state subventions other than mandate reimbursement, and, with respect to the State's spending limit, excludes such state subventions.[1265]

Article XIII B does *not* restrict the growth in appropriations financed from nontax sources, such as "user fees based on reasonable costs," and assessments.[1266] And appropriations subject to limitation do not include "[a]ppropriations for debt service." [1267]

Proposition 4 also added article XIII B, section 6, which was specifically "designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues."[1268] The California Supreme Court, in *County of Fresno v. State of California*,[1269] explained:

[1261] California Constitution, article XIII A, section 4 (effective June 7, 1978).

[1262] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[1263] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

[1264] California Constitution, article XIII B, section 8(c) (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990), emphasis added.

[1265] California Constitution, article XIII B, section 8(c) (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[1266] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; see also, *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 (finding that revenues from a local special assessment for the construction of public improvements are not "proceeds of taxes" subject to the appropriations limit).

[1267] California Constitution, article XIII B, section 9 (added, Nov. 7, 1979; amended by Proposition 111, June 5, 1990).

[1268] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

[1269] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[1270]

Most recently, the California Supreme Court concluded that articles XIII A and XIII B work "in tandem," for the purpose of precluding "the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose*."[1271] Accordingly, reimbursement under article XIII B, section 6 is only required when a mandated new program or higher level of service forces local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[1272]

Based on the record and documents publicly available,[1273] there is no evidence that the District used its proceeds of taxes to pay for the new state-mandated activities. The District has instead used assessment revenue to pay for NPDES permit costs and funds received from the County and city claimants pursuant to an Implementation Agreement and, thus, the District has not incurred "increased actual expenditures of limited tax proceeds that are counted against [the District's] spending limit."[1274]

[1270] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

[1271] *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763, emphasis added.

[1272] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[1273] California Code of Regulations, title 2, section 1187.5(c) ("Official notice may be taken in the manner and of the information described in Government Code Section 11515").

[1274] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

The District was established by the Legislature in 1945 to provide for the control of the flood and storm waters of the district and to conserve the waters for beneficial and useful purposes and has the power to cause taxes and assessments to be levied and collected for the purpose of paying any obligation of the District.[1275]

The District was designated as the principal permittee for the region's NPDES permits, including the test claim permit,[1276] and has the primary responsibility under the test claim permit for managing the implementation of the overall urban runoff program, including:

1. Implementing area-wide management programs, monitoring and reporting programs, and related plans and determining the effectiveness of the overall urban runoff program;
2. Coordinating implementation of the test claim permit, including: the submittal of joint reports, plans, and programs required by the test claim permit; the implementation and necessary updates to urban runoff quality management programs, monitoring and reporting programs, implementation plans, public education, other pollution prevention measures, household hazardous waste collection, and BMPs outlined in the DAMP; the development and implementation of procedures and performance standards, to assist in the consistent implementation of BMPs consistent with the MEP standard; the review of and revisions to the DAMP and the Implementation Agreement; water quality monitoring; the preparation of reports and programs required by the test claim permit; committees formed to comply with the test claim permit; and the development of guidelines for defining expertise and competencies of storm water program managers and inspectors and a training program for various positions in accordance with these guidelines and the requirements of the test claim permit;
3. Providing technical and administrative support to the co-permittees and support to the Management Steering Committee;
4. Gathering and sharing information on statewide urban runoff programs and regulatory requirements, BMPs, and other related topics;
5. Soliciting and coordinating public input for major changes to the urban runoff management programs and the implementation thereof.

[1275] Water Code Appendix sections 48-1 (Statutes 1945, chapter 1122), 48-9 (Statutes 1945, chapter 1122, last amended by Statutes 1987, chapter 669); Water Code Appendix section 48-9; see also Water Code section 48-14 (Taxes and Assessments, which authorizes the County Board of Supervisors to levy taxes or assessments on all taxable property for the District).

[1276] Exhibit A, Test Claim, filed January 31, 2011, pages 125, 132 (test claim permit).

6. Participating in watershed management programs and regional and/or statewide monitoring and reporting programs.[1277]

The test claim permit states that because the District "is not a general purpose government, some portions of the NPDES MS4 Program may not be applicable to it."[1278] The District's Enabling Act (Act 6642) does not provide the District with land use or police powers to control industrial or commercial development.[1279] Therefore, the District cannot regulate development of private, industrial, or commercial facilities, and does not perform inspections.[1280] The District alleges, however, that with respect to the pled regulatory activities under the new development and significant redevelopment section of the permit, the "development of the WAP [Watershed Action Plan], revised WQMP document, streamlining of regulatory requirements and development of new BMPs and other criteria was conducted by the District, with funding provided in part from the other Permittees through the Implementation Agreement."[1281] The District further alleges that it performed Local Implementation Plan (LIP) activities, including developing the LIP template, "in part through funding provided by the District pursuant to its obligations under the Implementation Agreement …entered into by the Permittees."[1282] The District did not claim costs for the septic system database requirement.[1283] The remaining mandated new activities relating to inspections, employee training, and urban runoff management program assessment, "were funded by the Permittees, including the District, through the Implementation Agreement."[1284]

[1277] Exhibit A, Test Claim, filed January 31, 2011, pages 173-175 (test claim permit, Section III.A.1).

[1278] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, fn. 23).

[1279] Exhibit N (18), Excerpts from Riverside County Flood Control and Water Conservation District's Local Implementation Plan, June 30, 2020, page 3.

[1280] Exhibit N (18), Excerpts from Riverside County Flood Control and Water Conservation District's Local Implementation Plan, June 30, 2020, page 3 ("the District does not have ordinances to regulate private development activities, private construction or grading activities, or private businesses or residents").

[1281] Exhibit A, Test Claim, filed January 31, 2011, page 68 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017).

[1282] Exhibit A, Test Claim, filed January 31, 2011, page 66 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017).

[1283] Exhibit A, Test Claim, filed January 31, 2011, page 66 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017).

[1284] Exhibit A, Test Claim, filed January 31, 2011, pages 67-69 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017).

The District's declaration in support of the Test Claim further states that in 1991, it established the Santa Ana Watershed Benefit Assessment to fund its MS4 compliance activities, and that the Benefit Assessment paid for "aspects of the District's compliance with the [test claim] Permit."[1285] There is no mention in the District's declarations that the District used any of its own tax revenues to pay for costs incurred under the test claim permit.[1286]

The Implementation Agreement identified by the District is a cooperative agreement with the County of Riverside and the Cities of Beaumont, Calimesa, Canyon Lake, Corona, Eastvale, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto, and Wildomar and "establishes the responsibilities of each party concerning compliance with the [test claim permit]."[1287] The Implementation Agreement requires the permittees to jointly fund as "shared costs" the following joint activities to be performed by the District, as required by test claim permit:

a. Funding of the responsibilities of the District as Principal Permittee in managing the overall urban runoff program (described in Section III.A.1 of the test claim permit).[1288]

b. Performing or coordinating all joint sampling data collection and assessment requirements described in the test claim permit's monitoring and reporting program.[1289]

[1285] Exhibit A, Test Claim, filed January 31, 2011, pages 125, 70 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017).

[1286] See also, Exhibit A, Test Claim, filed January 31, 2011, pages 71-72, paragraph 5 (Declaration of David Garcia, Engineering Project Manager within the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District dated April 27, 2017, which states, "The District is designated as Principal Permittee under the Permit, and in that role, coordinated and coordinates the response to certain of the Permit requirements set forth in this Test Claim as part of shared costs paid by the Permittees under the Implementation Agreement entered into by and between the Permittees.").

[1287] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, page 1. The test claim permit was amended in 2013 to (1) add the Cities of Eastvale and Jurupa Valley to the list of permittees; (2) remove Murrieta and Wildomar from the list of Permittees; and (3) add all portions of the City of Menifee. See Exhibit N (1), Order No. R8-2013-0024, dated June 7, 2013.

[1288] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, page 2; Exhibit A, Test Claim, filed January 31, 2011, pages 173-175 (test claim permit, Section III.A). The Implementation Agreement references joint activities performed by the District as Principal Permittee under "Section III.A" of the test claim permit. Section III.A consists of two parts: Part 1 refers to the activities the District is required to perform as the entity responsible for managing the overall urban runoff program and Part 2 refers to the activities the District is required to perform as the owner and operated of an MS4.

c. Performing all the joint reporting requirements described in the test claim permit's monitoring and reporting program, including preparing the required narrative for all joint reports and providing the co-permittees an opportunity to review and comment on any such narrative.[1290]

"Shared costs" include the District's necessary use of consultant services to prepare manuals, develop programs, or perform studies relevant to the entire permit area.[1291] Shared costs are allocated between the District, County, and cities, with the District responsible for 50 percent and the County and cities sharing the remaining 50 percent (with individual percentage contribution a function of population within the permit area) and are capped at $1 million annually.[1292] Paragraphs 3 and 4 of the Implementation Agreement state the following:

3. Budgets. On or before January 15 of each year, the DISTRICT shall prepare and submit a budget for the next fiscal year to the Santa Ana/Santa Margarita Technical Advisory Committee (TAC). The budget shall include anticipated costs and fees for District services or consultant services to prepare manuals, develop programs, implement programs, engage legal counsel on behalf of the Permittees or perform studies relevant to the entire Permit Area. Once consensus has been reached amongst the TAC, the budget will be submitted to the Management Steering Committee.

4. Shared Costs. In the event DISTRICT requires the services of a consultant or consultants to prepare manuals, develop programs or perform studies relevant to the entire Permit Area, the cost of said consultant services will be shared by DISTRICT, COUNTY and CITIES. The shared costs shall be allocated as follows:

Party	Percentage Contribution
DISTRICT	50
COUNTY & CITIES	50

The individual percentage contribution from COUNTY and individual CITIES shall be a function of population within the Permit Area. More specifically, such contribution shall be calculated as the population of COUNTY or individual CITIES, divided by the total population of all the Co-Permittees multiplied by 50, i.e.,:

Contribution (%) = $50 (x_n/x_{tot})$

[1289] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, page 2.

[1290] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, page 2.

[1291] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, page 6 (paragraph 4).

[1292] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, pages 6-7.

X_n = population of COUNTY or individual CITIES

X_{tot} = total population of COUNTY and CITIES in the Santa Ana Region

50 = total percentage excluding DISTRICT portion

The population of COUNTY and CITIES will be based on the latest California State Department of Finance population figures issued in May of each year.

The total shared cost of consultant services shall not exceed $1,000,000.00 annually.

COUNTY and CITIES shall be notified of DISTRICT'S request for proposals from consultants, selection of a consultant, consultant's fee, and contract timetable and payment schedule through the TAC.

COUNTY and CITIES shall pay to DISTRICT their share of the shared costs within 60 calendar days of receipt of an invoice from DISTRICT.

In the event that a subset of the COUNTY or CITIES require the services of a consultant or consultants to prepare manuals, develop programs, implement programs, engage legal counsel, perform studies or any work to satisfy sub-regional permit requirements, the costs of said consultant services shall be shared by the involved parties, in such a manner as approved by the involved parties. The involved parties may utilize this Agreement to hire a consultant. Tasks performed consistent to this paragraph shall not be subject to the total shared cost limit of $1,000,000 for area-wide programs.[1293]

Individual costs for each permittee, including the District, are incurred for complying with the various sections of the test claim permit as they pertain to each permittees' own facilities and operations.[1294]

In addition, the Santa Ana Watershed Benefit Assessment was established in 1991 pursuant to Ordinance 14 adopted by the District to offset the administrative and program costs associated with the NPDES stormwater program.[1295] The ordinance states in relevant part:

[1293] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, pages 6-7.

[1294] Exhibit N (13), Excerpts from Implementation Agreement, February 9, 2011, pages 3-5.

[1295] Exhibit N (12), Excerpts from Engineer's Report to the Board of Supervisors of the Riverside County Flood Control and Water Conservation District on the NPDES Program for the Santa Ana Watershed Benefit Assessment Area, July 2020, pages 2, 3-17 (Ordinance No. 14).

> The Board of Supervisors of the District finds that the Benefit Assessment to be annually levied shall be based on the proportional stormwater runoff generated by each lot or parcel within the Benefit Assessment Area. Revenues derived from the Benefit Assessment shall be applied exclusively to pay the District's administrative and program costs associated with the NPDES Permit required for the Benefit Assessment Area and are to be apportioned to the Benefit Assessment Area in which they are collected.[1296]

The assessment appears as a separate item on the county's property tax bill and is collected at the same time and in the same manner as property taxes.[1297] The Benefit Assessment has not increased since fiscal year 1996-1997.[1298]

The Riverside County Drainage Area Management Plan (DAMP) dated July 24, 2006, which serves as the principal document under the prior permit that translates the permit requirements into programs and implementation plans, indicates that the District's shared and individual costs to comply with the prior permit were paid using Benefit Assessment revenues.[1299] The 2017 DAMP similarly states that "[c]urrently, the Benefit Assessment revenues fund portions of the area-wide MS4 NPDES permit program activities and the District's compliance activities as a Permittee. In 2009/2010 the Santa

---

[1296] Exhibit N (12), Excerpts from Engineer's Report to the Board of Supervisors of the Riverside County Flood Control and Water Conservation District on the NPDES Program for the Santa Ana Watershed Benefit Assessment Area, July 2020, page 4 (Ordinance No. 14).

[1297] Exhibit N (12), Excerpts from Engineer's Report to the Board of Supervisors of the Riverside County Flood Control and Water Conservation District on the NPDES Program for the Santa Ana Watershed Benefit Assessment Area, July 2020, page 13 (Ordinance No. 14).

[1298] Exhibit N (12), Excerpts from Engineer's Report to the Board of Supervisors of the Riverside County Flood Control and Water Conservation District on the NPDES Program for the Santa Ana Watershed Benefit Assessment Area, July 2020, page 2 ("the proposed assessment rate for FY 2020-21 is equal to or less than the assessment rate that has been levied since FY 1996-97"); Exhibit A, Test Claim, filed January 31, 2011, page 70 (Declaration of Stuart McKibbin, Chief of the Watershed Protection Division of the Riverside County Flood Control and Water Conservation District, dated March 27, 2017, "The District anticipates no increase in the fees generated by the Benefit Assessment").

[1299] Exhibit N (15), Excerpts from Riverside County Drainage Area Management Plan, Santa Ana and Santa Margarita Regions, July 24, 2006, page 9 ("Currently, the Benefit Assessment revenues [for the Santa Ana and Santa Margarita Watershed Benefit Assessment Areas] fund both area-wide MS4 NPDES permit program activities and the District's compliance activities as a Permittee. In 2003/04 The Santa Ana Benefit Assessment generated approximately $1.7 million dollars in revenue").

Ana Benefit Assessment generated approximately $2.25 million in revenue."[1300] The District's Local Implementation Plan for fiscal year 2019-2020 shows that the Benefit Assessment revenues are used for program management, reporting, and public education and outreach activities under the test claim permit.[1301]

The District's Annual Budget for fiscal year 2011-2012 and its Comprehensive Annual Financial Report for year ending June 30, 2015 both identify the *NPDES Santa Ana Assessment* fund, which is the special revenue fund used to account for revenues and expenditures related to the National Pollutant Discharge Elimination System (NPDES) in the Santa Ana assessment area.[1302] This fund is funded by the benefit assessment and "Contributions-Other Agencies" or "Intergovernmental" (i.e. under the Implementation Agreement), and is not funded by any property tax revenues.

Thus, these documents show that the District used funds from the Benefit Assessment and the other permittees, under the terms of the Implementation Agreement, to pay for costs incurred to comply with the test claim permit. These funds, however, are not the District's proceeds of taxes and are not counted against the District's appropriations limit.

Assessments are levied for improvements that benefit particular parcels of land, do not raise the general revenues of the District, and are not counted against the District's appropriations limit.[1303] Moreover, the expenditure of assessment revenue is expressly *not* a "cost mandated by the state" under the Government Code.[1304]

[1300] Exhibit N (5), Excerpt from Riverside County Drainage Area Management Plan, Santa Ana Region, June 30, 2017, page 2.

[1301] Exhibit N (18), Excerpts from Riverside County Flood Control and Water Conservation District's Local Implementation Plan, June 30, 2020, page 2 (Figure 3-1). The other expenditures identified in the District's Local Implementation Plan as funded by the Benefit Assessment revenues include those outside the scope of the new state-mandated activities (elimination of illicit connections and illegal discharges, municipal facilities and activities, regional pollution prevention, and water quality monitoring); costs for development planning, which are paid using development fees; and regulatory activities to inspect private, industrial, and commercial facilities, for which the District has no mandated responsibilities.

[1302] Exhibit N (16), Excerpts from Riverside County Flood Control and Water Conservation District's Annual Budget, Fiscal Year 2011-2012, pages 2-5; Exhibit N (17), Excerpts from Riverside County Flood Control and Water Conservation District's Comprehensive Annual Financial Report for Year Ending June 30, 2015, pages 2-5.

[1303] *County of Placer v. Corin* (1980) 113 Cal.App.3d 444, 447-453.

[1304] Government Code section 17556(d), which provides that the Commission shall not find costs mandated by the state when the local agency "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

In addition, the funds received from the other co-permittees under the Implementation Agreement are *not* the District's proceeds of taxes. Although the Implementation Agreement funds may be the proceeds of taxes of the County and cities, the funds are received by the District pursuant to the contract. The Implementation Agreement funds are not levied by or for the District, and are not counted against the District's appropriations limit.[1305] Therefore, reimbursement is not required for the District's expenditure of the Implementation Agreement funds.[1306]

The Commission finds that there is no evidence in the record that the District has been forced to spend its local "proceeds of taxes" for the new mandated activities and, thus, the District has not incurred costs mandated by the state. Reimbursement is therefore denied for the Riverside County Flood Control and Water Conservation District.

2. There is Substantial Evidence in the Record that the County and Cities Used Proceeds of Taxes to Comply with the Test Claim Permit.

The County and cities filed declarations showing they have incurred shared costs and individual direct costs exceeding the $1,000 threshold to comply with the test claim permit.[1307] The Test Claim further asserts that although some claimants have access to local or regional fees or taxes, these funding sources do not cover all of the increased costs of the programs and activities required by the test claim permit.[1308] This statement is consistent with the declarations filed by the County and cities.[1309] The County declares that it used gas tax revenues[1310] and General Fund revenues, both of which are the County's proceeds of taxes, to pay for the costs incurred under the test claim permit:

[1305] California Constitution, article XIII B, section 8; *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[1306] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[1307] Exhibit A, Test Claim, filed January 31, 2011, pages 73-121 (Declarations from employees of the County of Riverside and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto).

[1308] Exhibit A, Test Claim, filed January 31, 2011, page 62 (Test Claim narrative).

[1309] Exhibit A, Test Claim, filed January 31, 2011, pages 73-121 (Declarations from employees of the County of Riverside and the Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto).

[1310] Gas Tax" revenues, though collected by the state and allocated to the counties by statute, fall within the definition of "proceeds of taxes," since they are a state subvention other than a subvention under section 6. Streets and Highways Code, section 2101 et seq.; California Constitution, article XIII B, section 8 ("With respect to any local government, 'proceeds of taxes' shall include subventions received from the State, other than pursuant to Section 6…").

> I am informed and believe that there are no dedicated state, federal or regional funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. I am informed and believe that certain of the programs set forth above are funded in part by the proceeds of fuel taxes collected in the County. I am further informed and believe that such proceeds are not sufficient to fund all programs set forth in this declaration. I am not aware of any other fee or tax that the County would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other available source to pay for these new programs and activities is the County's general fund.[1311]

The City of Moreno Valley also declares that it used General Fund revenues to pay for the costs incurred under the test claim permit:

> I am informed and believe that there are no dedicated state or federal funds that are or will be available to pay for any of the new and/or upgraded programs and activities set forth in this Declaration. The City has access to funding obtained through County Service Area 152 ("CSA 152"), which funds obligations of the City under the Permit. In addition, the City uses funds collected from new developments annexed to the City for stormwater programs associated with those new developments pursuant to a NPDES Rate Schedule. I am informed and believe that this CSA 152 and NPDES Rate Schedule funding is not sufficient to cover all of the programs and activities set forth in this Declaration over the course of the Permit. I am not aware of any fee or tax that the City would have the discretion to impose under California law to recover any portion of the cost of these programs and activities. I further am informed and believe that the only other source to pay for these new programs and activities is the City's general fund.[1312]

Similar declarations were filed by the claimant cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, with some acknowledging that they used County Service Area funds, Lighting and Landscape Maintenance Funds, and development fees, and all stating that they used General Fund revenues to pay for the alleged state mandated new activities identified in the declarations.[1313]

[1311] Exhibit A, Test Claim, filed January 31, 2011, page 78, paragraph 6 (Declaration of Steven Horn, Principal Management Analyst and NPDES Stormwater Program Administrator for the County of Riverside, dated March 27, 2017).

[1312] Exhibit A, Test Claim, filed January 31, 2011, page 108, paragraph 6 (Declaration of Ahmad R. Ansari, Public Works Director/City Engineer for the City of Moreno Valley, dated March 21, 2017).

[1313] Exhibit A, Test Claim, filed January 31, 2011, pages 83-84 (Declaration from City of Beaumont employee, stating that the only funding source available is the City's General

The test claim permit Fact Sheet states that historically, the permittees have used four different funding methods to pay for the NPDES permit activities, with many permittees using a combination of sources, including:

> A. Santa Ana Watershed Benefit Assessment Area
>
> In 1991, the RCFC&WCD established the Santa Ana Watershed Benefit Assessment Area (SAWBAA) to fund its NPDES activities. Currently, SAWBAA revenues fund both area-wide NPDES program activities and the RCFC&WCD's individual MS4 permit compliance activities.
>
> B. County Service Area 152
>
> In December 1991, the County of Riverside formed County Service Area 152 (CSA 152) to provide funding for compliance activities associated with its NPDES permit activities. Under the laws that govern CSAs, sub-areas may be established within the overall CSA area with different assessment rates set within each sub-area. The cities of Corona, Moreno Valley, Norco, Riverside, Lake Elsinore and San Jacinto elected to participate in CSA 152.[1314]

Fund revenues), 89-90 (Declaration from City of Corona employee, discussing use of County Service Area 152 funds and General Fund revenues), 96 (Declaration from City of Hemet employee, discussing use of "sewer and storm drain fee" to pay for some but not all of test claim permit activities and General Fund revenues), 101-102 (Declaration from City of Lake Elsinore employee, discussing use of County Service Area 152 funds and General Fund revenues), 108 (Declaration from City of Moreno Valley employee, discussing use of County Service Area 152 funding, funds collected from new developments pursuant to an NPDES rate schedule, and General Revenue funds), 114-115 (Declaration from City of Perris employee, discussing use of City's General Fund revenues), 120-121 (Declaration from City of San Jacinto employee, discussing use of County Service Area 152 funds, Landscape and Lighting Park District fees, and General Fund revenues).

According to the Fact Sheet, Riverside County formed County Service Area 152 in December 1991 "to provide funding for compliance activities associated with its NPDES permit activities. Under the laws that govern CSAs, sub-areas may be established within the overall CSA area with different assessment rates set within each sub-area. The cities of Corona, Lake Elsinore, Moreno Valley, Norco, Riverside, Murrieta and San Jacinto elected to participate in CSA 152." Exhibit A, Test Claim, filed January 31, 2011, page 349 (test claim permit, Appendix 6 [Fact Sheet]).

[1314] County Service Area 152 funding is authorized by the County Service Area Law (Government Code section 25210 et seq), which authorizes the county board of supervisors to levy special taxes pursuant to Government Code section 50075; to levy benefit assessments for operations and maintenance of services and facilities, consistent with the requirements of article XIII D of the California Constitution; to establish user fees, rates or other charges, provided they are not property-related fees and charges, for services and facilities that are not property-related; and impose

C. Utility Charge

The City of Hemet funds a portion of its NPDES program activities through a utility charge.

D. General Fund /Other Revenues

Permittees also utilize general fund revenue to finance their NPDES activities. Several Permittees also report using general fund and other revenue sources (e.g., gas taxes, developer fees, etc.) to fund a portion of their Urban Runoff management activities.[1315]

There is no evidence in the record to rebut these documents. Accordingly, there is substantial evidence in the record that the County and cities used proceeds of taxes to comply with the test claim permit. The analysis must continue, however, to determine whether any of the exceptions in Government Code section 17556 apply.

3. The Courts Have Held There Are *No* Costs Mandated by the State Pursuant to Government Code Section 17556(d) When Local Government Has the Authority to Charge Regulatory Fees Pursuant to Article XIII C or Property-Related Fees that Are Subject Only to the Voter Protest Provisions of Article XIII D, Section 6 of the California Constitution. However, Government Code Section 17556(d) Does Not Apply When Proposition 218 Requires Voter Approval to Impose Property-Related Stormwater Fees and Thus, Under These Circumstances, There Are Costs Mandated by the State.

Government Code section 17556(d) provides that the Commission "shall not find costs mandated by the state, as defined in Section 17514" if the Commission finds that "the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

The claimants argue that while some claimants have local or regional fees or taxes available to fund some of the test claim permit activities, those fees will not cover "all increased costs represented by the programs and activities set forth in this Test Claim. The Claimants do not have other fee authority to offset these new and additional costs. It should be further noted that with the passage of Proposition 26 by the voters in November [2010], the ability of the Claimants to raise new fees has been further constrained."[1316]

However, there is no question that local agencies have the authority to charge fees for stormwater programs. Cities and counties have authority under the California

---

property-related fees and charges for the property-related services that the county service area provides, subject to the requirements of article XIII D of the California Constitution. See Government Code sections 25210.1, 25215.2-25215.6.

[1315] Exhibit A, Test Claim, filed January 31, 2011, page 349 (test claim permit, Appendix 6 [Fact Sheet]).

[1316] Exhibit A, Test Claim, filed January 31, 2011, page 62 (Test Claim narrative).

Constitution to make and enforce ordinances and resolutions to protect and ensure the general welfare within their jurisdiction, which is commonly referred to as the "police power."[1317] That authority includes the power to impose fees or charges that are directed toward a particular activity or industrial or commercial sector, known as "regulatory fees;" fees or charges based on services or benefits received from government, known as "user fees;" fees or charges imposed as a condition of development of real property, known as "development fees;" and fees or charges (or assessments) levied on all property owners within the jurisdiction, which after Proposition 218 are commonly described as "property-related fees or assessments." In addition, a number of provisions of the Government Code provide express authority to impose or increase regulatory fees,[1318] fees for development of real property,[1319] and property-based assessments, fees and charges.[1320] Each of these fees or charges is subject to differing limitations pursuant to Propositions 218 and 26.[1321]

The analysis below will address those limitations separately, because only property-related fees and assessments are subject to the notice, hearing, and majority approval or protest provisions of articles XIII D.

"Regulatory," "development," and "user" fees or charges are not subject to voter approval or majority protest. Broadly, these categories of fees are those that are targeted toward certain activities or sectors of industrial or commercial activity, or certain benefits received from the government or burdens created by the activity or the entity, rather than imposed on all property owners as an incident of property ownership.[1322] Such fees may be adopted as an ordinance or resolution in the context

---

[1317] California Constitution, article XI, section 7. See also, *Marblehead Land Co. v. City of Los Angeles* (1931) 47 F.2d 528, 532.

[1318] See, for example, Government Code section 37101 ("The legislative body may license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city").

[1319] Government Code section 66001 provides for development fees under the Mitigation Fee Act requiring local entity to identify the purpose of the fee and the uses to which revenues will be put, to determine a reasonable relationship between the fee's use and the type of project or projects on which the fee is imposed.

[1320] See, for example, Health and Safety Code section 5471 (fees for storm drainage maintenance and operation); Government Code sections 38902 (providing for sewer standby charges); 53750 et seq. (Proposition 218 Omnibus Implementation Act, describing procedures for adoption of assessments, fees and charges); 53751 (as amended in 2017, providing that fees for sewer services includes storm sewers).

[1321] California Constitution, articles XIII C and XIII D.

[1322] See *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842.

of the legislative body's normal business,[1323] subject only to the limitations of article XIII C, section 1(e), which, largely turn on establishing the relationship between the revenues raised and the uses to which they are put, and the amount charged and the benefits received or burdens created by the payor.[1324]

As explained below, the courts have held that there are no costs mandated by the state pursuant to Government Code section 17556(d) when local government has the authority to charge regulatory fees pursuant to article XIII C or property-related fees that are subject only to the voter protest provisions of article XIII D, section 6 of the California Constitution.

a. Case law establishes that the exception to the subvention requirement found in Government Code section 17556(d) is a legal inquiry, not a practical one.

The California Supreme Court upheld the constitutionality of Government Code section 17556(d) in *County of Fresno.*[1325] The court, in holding that the term "costs" in article XIII B, section 6, excludes expenses recoverable from sources other than taxes, stated:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*[1326]

Following the logic of *County of Fresno*, the Third District Court of Appeal in *Connell v. Superior Court* held that the Santa Margarita Water District, and other similarly situated districts, had statutory authority to raise rates on water, notwithstanding argument and evidence that the amount by which the district would be forced to raise its rates would

---

[1323] See, for example, *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450 ("If revenue is the primary purpose and regulation is merely incidental the imposition is a tax; while if regulation is the primary purpose the mere fact that incidentally a revenue is also obtained does not make the imposition a tax").

[1324] California Constitution, article XIII C, section 1(e).

[1325] *County of Fresno v. State of California* (1990) 53 Cal.3d. 482.

[1326] *County of Fresno v. State of California* (1990) 53 Cal.3d. 482, 487.

render the water unmarketable.[1327] The district acknowledged the existence of fee authority, but argued it was not "sufficient," within the meaning of section 17556(d).[1328] The court held that "[t]he Districts in effect ask us to construe 'authority,' as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of [section 17556(d)] and would create a vague standard not capable of reasonable adjudication."[1329] The court concluded: "Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry."[1330]

More recently, the Third District Court of Appeal endorsed and followed *Connell* in *Paradise Irrigation District*: "[w]e also reject the Water and Irrigation Districts' claim that, as a matter of practical reality, the majority protest procedure allows water customers to defeat the Districts' authority to levy fees."[1331] Instead, the court held, "[w]e adhere to our holding in *Connell* that the inquiry into fee authority constitutes an issue of law rather than a question of fact."[1332] Further, the 2021 decision of the Second District Court of Appeal in *Department of Finance v. Commission on State Mandates* found that "[e]ven if we assume that drafting or enforcing a law that imposes fees to pay for inspections would be difficult, the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so."[1333] And, the 2022 decision of the Third District Court of Appeal in *Department of Finance v. Commission on State Mandates* found that "The sole issue before us is whether permittees have 'the authority, i.e., the right or power, to levy fees sufficient to cover the costs of the state-mandated program' . . . The inquiry is an issue of law, not a question of fact."[1334]

Accordingly, the rule from these cases is that where the claimant has "authority, i.e., the right or power, to levy fees sufficient to cover the costs" of a state mandated program, reimbursement is not required, notwithstanding other factors that may make the exercise of that authority impractical, undesirable, or difficult.[1335]

[1327] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 402.

[1328] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 398.

[1329] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

[1330] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

[1331] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

[1332] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

[1333] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564, citing *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

[1334] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 585.

[1335] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401-402.

b. The County and Cities have authority to charge regulatory fees sufficient to pay for the activities related to commercial facilities inspections (Sections XI.D.1 and XI.D.7), requirements to regulate new development and significant redevelopment projects including LID and hydromodification management for those projects (Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4, XII.E.6-9, XII.F.1, XII.F.2, and XII.G.1), and structural post-construction BMP tracking (Sections XII.K.4 and XII.K.5), which are sufficient as a matter of law to cover the costs of the activities within the meaning of Government Code section 17556(d) and, thus, there are no costs mandated by the state for these activities. However, the County and Cities do **not** have fee authority to pay for the Watershed Action Plan (Section XII.B).

i. The claimants have constitutional and statutory authority to impose regulatory fees, which are exempt from the definition of "tax" under article XIII C of the California Constitution as long as the fees meet a threshold of reasonableness and proportionality.

Article XI, section 7 of the California Constitution provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[1336] Interpreting this provision, and its predecessor, the courts have held that a local legislative body with police power "has a wide discretion" and its laws or ordinances "are invested with a strong presumption of validity."[1337] The courts have held that "the power to impose valid regulatory fees does not depend on legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution."[1338] Accordingly, ordinances or laws regulating legitimate businesses or other activities within a city or county, as well as regulating the development and use of real property, have generally been upheld.[1339] In addition, "[t]he services for which a regulatory fee may be charged include those that are "'incident to the issuance of [a] license or permit,

[1336] California Constitution, article XI, section 7.

[1337] *Marblehead Land Co. v. City of Los Angeles* (1931) 47 F.2d 528, 532.

[1338] *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 662 (in which a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without a two-thirds affirmative vote of the county electors).

[1339] See *Ex parte Junqua* (1909) 10 Cal.App. 602 (police power "embraces the right to regulate any class of business, the operation of which, unless regulated, may, in the judgment of the appropriate local authority, interfere with the rights of others…."); *Sullivan v. City of Los Angeles Dept. of Building & Safety* (1953) 116 Cal.App.2d 807 (recognizing broad power to regulate not only nuisances but things or activities that may become nuisances or injurious to public health); *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 (recognizing broad authority of municipality to regulate land use).

investigation, inspection, administration, maintenance of a system of supervision and enforcement.'"[1340] The courts also hold that water pollution prevention is a valid exercise of government police power.[1341]

Moreover, as noted above, a number of provisions of the Government Code provide express authority to impose or increase regulatory fees,[1342] and fees for development of real property,[1343] and property-based assessments, fees and charges.[1344]

Thus, there is no dispute that the claimants have authority, both statutory and constitutional (recognized in case law), to impose fees, including regulatory and development fees.[1345] The issue in dispute is how far that authority goes and whether Propositions 218 and 26 impose procedural and substantive restrictions that so weaken that authority as to render it insufficient within the meaning of Government Code section 17556(d).

As discussed above, Proposition 13 of 1978 added article XIII A to the California Constitution, with the intent to limit local governments' power to impose or increase *taxes*.[1346] Proposition 13 generally limited the rate of any ad valorem tax on real property to one percent; limited increases in the assessed value of real property to two percent annually absent a change in ownership; and required that any changes in state taxes enacted to increase revenues and special taxes imposed by local government

---

[1340] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 562, quoting *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1341] *Freeman v. Contra Costa County Water Dist.* (1971) 18 Cal.App.3d 404, 408.

[1342] See, for example, Government Code section 37101 ("The legislative body may license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city").

[1343] Government Code section 66001 provides for development fees under the Mitigation Fee Act requiring local entity to identify the purpose of the fee and the uses to which revenues will be put, to determine a reasonable relationship between the fee's use and the type of project or projects on which the fee is imposed.

[1344] See, for example, Government Code sections 38902 (providing for sewer standby charges); 53750 et seq. (Proposition 218 Omnibus Implementation Act, describing procedures for adoption of assessments, fees and charges); 53751 (as amended in 2017, providing that fees for sewer services includes storm sewers).

[1345] See also, *Ayers v. City Council of City of Los Angeles* (1949) 34 Cal.2d 31 (Upholding conditions imposed by the City on subdivision development, in the absence of any clear restriction or limitation on the City's police power); *Associated Home Builders etc. Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633 (upholding state statute and local ordinance requiring dedication or in-lieu fees for parks and recreation as a condition of subdividing for residential building).

[1346] See, e.g., *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

must be approved by a two-thirds vote of the electors.[1347] Proposition 13, however, did not define "special taxes"; a series of judicial decisions tried to define the difference between fees and taxes, and in so doing, diminished Proposition 13's import by allowing local governments to generate revenue without a two-thirds vote.[1348]

In 1996, Proposition 218 added article XIII C to ensure and reiterate voter approval requirements for general and special taxes, because it was not clear whether Proposition 62, which enacted statutory provisions to ensure that all new local taxes be approved by a vote of the local electorate, bound charter jurisdictions.[1349] As added by Proposition 218, article XIII C defined all taxes as general or special, and provided that special districts have no power to impose general taxes; and for any other local government, general taxes require approval by a majority of local voters, and special taxes require a two-thirds majority voter approval.[1350]

Interpreting the newly-reiterated limitation on local taxes, the California Supreme Court in *Sinclair Paint* held that a statute permitting the Department of Health Services to levy fees on manufacturers and other persons contributing to environmental lead contamination, in order to support a program of evaluation and screening of children, imposed bona fide *regulatory fees*, and not, as alleged by plaintiffs, a special tax that would require voter approval under articles XIII A and XIII C.[1351] The Court noted with approval *San Diego Gas & Electric*, in which the air district was permitted to recover costs of its operations, which are not reasonably identifiable with specific industrial polluters, against all monitored polluters according to an emissions-based formula, and those fees were not held to constitute a special tax.[1352] The Court cited with approval the court of appeal's finding that "[a] reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves…"[1353] The Court thus held: "In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision."[1354]

[1347] *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1317.

[1348] *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1317-1319.

[1349] *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 258-259.

[1350] See Exhibit N (24), Excerpts from Voter Information Guide, November 1996 General Election (Proposition 218, November 5, 1996).

[1351] *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 870; 877.

[1352] *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1148.

[1353] *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 879 quoting *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1148.

[1354] *Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 879.

In 2010, the voters approved Proposition 26, partly in response to *Sinclair Paint*.[1355] Proposition 26 sought to broaden the definition of "tax," and accordingly narrow the courts' construction of permissible non-tax fees. However, Proposition 26 largely *codifies* the analysis of *Sinclair Paint*, in its articulation of the various types of fees and charges that are *not* deemed "taxes."[1356] Thus, while Proposition 13 led a series of increasing restrictions on the imposition of new taxes, after *Sinclair Paint* and Propositions 218 and 26, local governments have the power, subject to varying limitations, to impose or increase (1) general taxes (with voter approval);[1357] (2) special taxes (with *two-thirds* voter approval);[1358] and (3) levies, charges, or exactions that are not "taxes," pursuant to the exceptions stated in article XIII C, section 1(e), which include:

> (1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
>
> (2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
>
> (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
>
> (4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
>
> (5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
>
> (6) A charge imposed as a condition of property development.
>
> (7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.
>
> The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the

---

[1355] See Exhibit N (25), Excerpts from Voter Information Guide, November 2010 General Election (Proposition 26, Nov. 2, 2010), page 3.

[1356] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1210, footnote 7 (citing *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 262) and footnote 5.

[1357] California Constitution, article XIII C, section 2.

[1358] California Constitution, article XIII C, section 2.

> amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.[1359]

The plain language of article XIII C, section 1(e) thus describes certain categories of fees or exactions that are not taxes, including fees or charges for a benefit conferred or privilege granted,[1360] and fees or charges for a government service or product provided to the payor and not others.[1361] Both of these could be described as "user" fees, or otherwise described as fees for a government service or benefit. In addition, section 1(e) provides for regulatory fees (including those for inspections),[1362] development fees,[1363] and assessments or property-related fees or charges adopted in accordance with article XIII D.[1364] In each case, the local government bears the burden to establish that the fee or charge is not a tax, including that "the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."[1365]

However, while the limitations of article XIII C, section 1(e) may be newly expressed in the Constitution (i.e., added in 2010 by Proposition 26), the concepts that regulatory fees must be reasonably related to a legitimate public purpose, and in some way proportional to the activity being regulated, are not at all new. The California Supreme Court described the history of such fees in *United Water Conservation Dist.*, saying, "the language of Proposition 26 is drawn in large part from pre-Proposition 26 case law distinguishing between taxes subject to the requirements of article XIII A, on the one hand, and regulatory and other fees, on the other."[1366] The Court also noted: "*Sinclair Paint*, from which the relevant article XIII C requirements are derived, made clear that the aggregate cost inquiry and the allocation inquiry are two separate steps in the analysis."[1367] Accordingly, the Court upheld the court of appeal's finding that the conservation charges did not exceed the reasonable cost of the regulatory activity in the

---

[1359] California Constitution, article XIII C, section 1(e).

[1360] California Constitution, article XIII C, section 1(e)(1).

[1361] California Constitution, article XIII C, section 1(e)(2).

[1362] California Constitution, article XIII C, section 1(e)(3).

[1363] California Constitution, article XIII C, section 1(e)(6).

[1364] California Constitution, article XIII C, section 1(e)(7).

[1365] California Constitution, article XIII C, section 1(e).

[1366] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1210, footnote 7 (citing *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 262) and footnote 5.

[1367] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1210.

aggregate,[1368] but presumed "each requirement to have independent effect,"[1369] and remanded the matter for consideration of the latter issue.

Similarly, in *San Diego County Water Authority*, the First District Court of Appeal upheld non-property-related rates charged for conveying water from the Colorado River based on a two-part test.[1370] The rates were held to satisfy both the express requirements of article XIII C, section 1(e)(2): "a specific service (use of the conveyance system) directly to the payor (a member agency) that is not provided to those not charged and which does not exceed the reasonable costs…of providing the service"; and the more general test of *Sinclair Paint*: "[the volumetric rates] bear a fair and reasonable relationship to the benefits it receives from its use of the conveyance system."[1371]

Notably, developer fees have been interpreted somewhat more loosely with respect to this proportionality test. The plain language of article XIII C, section 1(e)(6) conspicuously omits any language relating to the reasonable costs or burdens of development, although the general caveat at the end of section 1(e) presumably still applies: "that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."[1372] However, the court in *616 Croft Ave., LLC* suggests that as long as a development fee is "reasonably related to the broad general welfare purposes for which the ordinance was enacted,"[1373] the courts will not inquire into the reasonableness of the fee as applied to a particular payor:

> [A]lthough the fee must be reasonable, the inquiry is not about the reasonableness of the individual calculation of fees related to Croft's development's impact on affordable housing. The inquiry is whether the fee schedule *itself* is reasonably related to the overall availability of affordable housing in West Hollywood.[1374]

[1368] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1212.

[1369] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1214 (citing *Dix v. Superior Court* (1991) 53 Cal.3d 442, 459).

[1370] *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1153.

[1371] *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1153.

[1372] California Constitution, article XIII C, section 1(e).

[1373] *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621, 631.

[1374] *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621, 631-632.

The court relied in part on article XIII D, section 1, which states that "[n]othing in this article or Article XIII C shall be construed to…[a]ffect exiting laws relating to the imposition of fees as a condition of property development."[1375]

Accordingly, there is no reason to believe that article XIII C imposes any greater limitation on local governments' authority under their police power to impose reasonable regulatory fees and other fees than existed under prior law. Article XIII C makes clear that the burden is on the local government to establish that the levy is not a tax, that the fee is reasonably related to the costs to government in the aggregate, and that the fee charged to the payors is reasonably related to the benefits received or burdens created by such payors as a part of the rate setting process.[1376] It is not the burden of the state to make this showing on behalf of local government.

In addition, there is evidence that the claimants do in fact impose development fees, regulatory fees, and other fees that they have successfully established as fees, rather than taxes, even after the adoption of Propositions 218 and 26. For example, a declaration submitted by the City of Moreno Valley identifies "funds collected from new developments annexed to the City for stormwater programs associated with those new developments" as a funding source,[1377] and the County's adopted budget for fiscal year 2011-2012 includes revenue generated from building permits of $1,643,939 during 2010-2011.[1378]

Based on the foregoing, the Commission finds that article XIII C of the California Constitution does not render local government's authority to impose fees insufficient as a matter of law within the meaning of Government Code section 17556.

ii. The claimants have fee authority to cover the costs of the commercial facilities inspection activities required by Sections XI.D.1 and XI.D.7, and, thus, there are no costs mandated by the state for these activities pursuant to Government Code section 17556(d).

As indicated above, Sections XI.D.1 and XI.D.7 impose the following commercial facilities inspection requirements:

- Within 18 months of adoption of the test claim permit, identify facilities that transport, store, or transfer pre-production plastic pellets and managed turf

[1375] *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621, 631 ("Because the City has shown the fees are not special taxes under *Terminal Plaza* [*Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892], articles XIII C and XIII D of the California Constitution do not require the City to demonstrate the reasonableness of Croft's individual fee").

[1376] California Constitution, article XIII C, section 1(e).

[1377] Exhibit A, Test Claim, filed January 31, 2011, page 108, paragraph 6 (Declaration of Ahmad R. Ansari, Public Works Director/City Engineer for the City of Moreno Valley, dated March 21, 2017).

[1378] Exhibit N (4), Excerpt from County of Riverside, Adopted Budget, Fiscal Year 2011-2012, page 2.

facilities and determine if these facilities warrant additional inspection to protect water quality.[1379]

- Within 24 months of adoption of the test claim permit, develop an enforcement strategy to address mobile businesses.[1380]

The claimants allege that there is no fee authority for these activities because these activities are not directly tied to an investigation or inspection of a particular facility.[1381]

The Commission finds, however, that the claimants have regulatory fee authority and, thus, these activities do not result in costs mandated by the state pursuant to Government Code section 17556(d).

The 2021 *Department of Finance* decision of the Second District Court of Appeal addressed NPDES permit requirements issued by the Los Angeles Regional Water Quality Control Board to periodically inspect commercial and industrial facilities to ensure compliance with various environmental regulatory requirements.[1382] Consistent with article XIII C, section 1(e)(3) of the California Constitution, the court found that the local agencies subject to that permit had the authority under their police powers to charge regulatory fees for the inspection activities:

> We agree with the Commission that, based upon the local governments' constitutional police power and their ability to impose a regulatory fee that (1) does not exceed the reasonable cost of the inspections, (2) is not levied for unrelated revenue purposes, and (3) is fairly allocated among the fee payers, the local governments have such authority.[1383]

Even though the imposition of the fee may be difficult, the court held that local governments have the authority to impose the fee and, thus, reimbursement under article XIII B, section 6 was not required:

> The local governments also argue that a fee that must be no more than necessary to cover the reasonable costs of the inspections "would be difficult to accomplish." They refer to problems that would arise from a general business license fee on all businesses, including those not subject to inspection, and to charging fees for inspections in years in which no inspection would take place. Even if we assume that drafting or enforcing

---

[1379] Exhibit A, Test Claim, filed January 31, 2011, page 205 (test claim permit, Section XI.D.1).

[1380] Exhibit A, Test Claim, filed January 31, 2011, page 206 (test claim permit, Section XI.D.7).

[1381] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 31.

[1382] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 552.

[1383] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 562-563.

> a law that imposes fees to pay for inspections would be difficult, the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so. (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, 69 Cal.Rptr.2d 231.) As explained above, the police powers provision of the constitution and the judicial authorities we have cited provide that authority.[1384]

In addition, the courts have explained that the scope of a regulatory fee is somewhat flexible, is valid as long as it relates to the overall purpose of the regulatory governmental action, and can include inspection, administration, and maintenance of a system of supervision and enforcement.[1385] Moreover, regulatory fees are valid despite the absence of any perceived "benefit" accruing to individual fee payers.[1386] "The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors."[1387] Thus, the fact that the required activities may not be tied directly to a particular facility does not defeat the claimants' fee authority. The fee just has to be related to the overall cost of the governmental regulation and can include "all the incidental consequences that may be likely to subject the public to cost in consequence of the business licensed."[1388]

Accordingly, the claimants have fee authority to cover the costs of the commercial facilities inspection activities required by Sections XI.D.1 and XI.D.7, and, thus, there are no costs mandated by the state for these activities pursuant to Government Code section 17556(d).

[1384] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 564-565.

[1385] *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 438, citing to *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1386] *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1387] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1388] *United Business Commission v. City of San Diego* (1979) 91 Cal.App.3d 156, 166, footnote 2.

iii. The claimants have fee authority for the new state-mandated requirements related to the new development and significant redevelopment activities (Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4, XII.E.6-9, XII.F.1, XII.F.2, and XII.G.1.), and structural post-construction BMP tracking (Sections XII.K.4 and XII.K.5), and thus, there are no costs mandated by the state pursuant to Government Code section 17556(d).

As indicated above, the following LID and hydromodification, and structural post-construction BMP tracking activities, may impose a state-mandated new program or higher level of service:

- Ensure that appropriate BMPs to reduce erosion and mitigate hydromodification are included in the design for replacement of existing culverts or construction of new culverts and/or bridge crossings to the MEP;[1389]
- Review, and amend each permittee's general plan and related documents (e.g., development standards, zoning codes, conditions of approval) to eliminate barriers to implementation of LID principles and hydrologic conditions of concern, and reflect any changes to the project approval process or procedures in the LIP;[1390]
- Submit a revised WQMP to incorporate the new elements required in the test claim permit;[1391]
- Perform the following low impact development (LID) and hydromodification management activities:
    - Update and implement the WQMP to address LID principles and hydrologic conditions of concern;[1392]
    - Require development projects to infiltrate, harvest and use, evapotranspire, and/or bio-treat the 85th percentile storm event; however, to the extent that entire volume cannot be captured, treat and discharge that portion of the volume in compliance with permit requirements;[1393]

[1389] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.5).

[1390] Exhibit A, Test Claim, filed January 31, 2011, page 211 (test claim permit, Section XII.C.1).

[1391] Exhibit A, Test Claim, filed January 31, 2011, page 213 (test claim permit, Section XII.D.1).

[1392] Exhibit A, Test Claim, filed January 31, 2011, pages 217 (test claim permit, Section XII.E.1).

[1393] Exhibit A, Test Claim, filed January 31, 2011, pages 217 (test claim permit, Section XII.E.2).

- Incorporate LID site design principles into the revised WQMP, and require development projects to include site design BMPs during the development of the project-specific WQMP;[1394]
- Revise ordinances, codes, building and landscape design standards to promote LID techniques;[1395]
- Implement education programs to educate property owners of new development or significant redevelopment projects to use pollution prevention BMPs and to maintain on-site hydrologically functional landscape controls;[1396]
- Specify in the revised WQMP the preferential use of site design BMPs that incorporate LID techniques, where feasible, and prioritize the mitigation of structural site design BMPs;[1397]
- Continue to ensure through the WQMP review and approval process that development projects do not pose a hydrologic condition of concern, and if a hydrologic condition of concern exists, evaluate whether adverse impacts are likely to occur and if so, require the project proponent to implement additional BMPs to mitigate the impacts;[1398]

- Develop standard design and post-development BMP guidance to be incorporated into projects for streets, roads, highways, and freeway improvements, under the jurisdiction of the co-permittees to reduce the discharge of pollutants from the projects to the MEP, and submit the draft guidance to the executive officer for review and approval;[1399]
- Implement the approved standard design and post-development BMP guidance for all road projects;[1400]

[1394] Exhibit A, Test Claim, filed January 31, 2011, pages 217-218 (test claim permit, Section XII.E.3).

[1395] Exhibit A, Test Claim, filed January 31, 2011, pages 218-219 (test claim permit, Section XII.E.4).

[1396] Exhibit A, Test Claim, filed January 31, 2011, page 219 (test claim permit, Section XII.E.6).

[1397] Exhibit A, Test Claim, filed January 31, 2011, pages 219-220 (test claim permit, Sections XII.E.7 and XII.E.8).

[1398] Exhibit A, Test Claim, filed January 31, 2011, pages 220-221 (test claim permit, Section XII.E.9).

[1399] Exhibit A, Test Claim, filed January 31, 2011, pages 221-222 (test claim permit, Section XII.F.1).

[1400] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.F.2).

- Develop criteria for project evaluation to determine the feasibility of implementing LID BMPs;[1401]
- Maintain a database to track the operation and maintenance of structural post-construction BMPs installed after adoption of the test claim permit;[1402] and
- Develop an inspection frequency for new development and significant redevelopment projects, based on the project type and the type of structural post construction BMPs deployed. In addition, structural post construction BMPs for all new development and significant redevelopment projects shall be inspected within the five-year permit term. The co-permittees shall ensure that the BMPs are operating and are maintained properly and all BMPs are working effectively to remove pollutants in runoff from the site. All inspections shall be documented and kept as permittee record.[1403]

The sole issue for determining whether Government Code section 17556(d) applies is whether the claimants have the "authority, i.e., the right or power, to levy fees sufficient to cover the costs" of a state mandated program, notwithstanding other factors that may make the exercise of that authority or the collection of those fees impractical or difficult.[1404] And, as explained above, the claimants have the authority under their police powers to impose regulatory fees on development, which must meet the requirements of article XIII C, section 1(e) (Proposition 26).

In 2022, the Third District Court of Appeal issued its decision in *Department of Finance* (*Discharge of Stormwater Runoff*) and found that the permittees had regulatory fee authority under their police powers to pay for the requirements imposed by the San Diego Regional Water Quality Control Board to develop and implement a hydromodification management plan and LID requirements for use on priority development projects, as incidental expenses of regulating development.[1405] Similar to the test claim permit here, the court explained that the priority development projects addressed in the permit are certain new developments that increase pollutants in stormwater and in discharges from MS4s, including certain residential, commercial, and industrial uses along with parking lots and roads that add impervious surfaces or are

---

[1401] Exhibit A, Test Claim, filed January 31, 2011, page 222 (test claim permit, Section XII.G.1).

[1402] Exhibit A, Test Claim, filed January 31, 2011, page 225 (test claim permit, Section XII.K.4).

[1403] Exhibit A, Test Claim, filed January 31, 2011, pages 225-226 (test claim permit, Section XII.K.5).

[1404] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401-402; *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 585.

[1405] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 586-593.

built on hillsides or in environmentally sensitive areas.[1406] The permit required the claimants to develop and implement a hydromodification management plan to mitigate increases in runoff discharge rates and durations from priority development projects, and add LID requirements to their local Standard Urban Storm Water Mitigation Plans.[1407] The County and cities argued that the costs of creating the plans could not be recovered through regulatory fees, and thus voter approval would be required, since the amount of the fee would exceed the reasonable costs of providing the services for which it is charged, and the amount of the fee would not bear a reasonable relationship to the burdens created by the feepayers' activities or operations, primarily because the costs were incurred before any priority development project was proposed.[1408] The County and cities further argued that they could not legally levy a fee to recover the cost of preparing the plans because those planning actions benefit the public at large and, thus, would constitute a tax.[1409] The court disagreed and found that local government has fee authority sufficient as a matter of law to cover the costs of the hydromodification management plan and LID requirements within the meaning of Government Code section 17556(d) and, thus, there were no costs mandated by the state for these activities based on the following findings:

- Creating the hydromodification management plans and the LID requirements "constitute costs incident to the development permit which permittees will issue to priority development projects and the administration of permittees' pollution abatement program. Setting the fee will not require mathematical precision. Permittees' legislative bodies need only consider probabilities according to the best honest viewpoint of [their] informed officials to set the amount of the fee."[1410]
- There was no evidence that the permittees could not levy a fee that would bear a reasonable relationship to the burdens created by future priority development. "A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors . . . The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors." The fee just has to be related to the

[1406] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 586.

[1407] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 586.

[1408] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 587-590.

[1409] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 592-593.

[1410] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590, internal quotations omitted.

overall cost of the governmental regulation.[1411]

- The court rejected the claimants' argument that they could not legally levy a fee to recover the cost of preparing the plans because those planning actions benefit the public at large, relying on *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451. Proposition 26 states a levy is not a tax where, among other uses, it is imposed "for a specific government service provided directly to the payor *that is not provided to those not charged* ...."[1412] However, the court found that the service provided directly to developers of priority development projects was the preparation, implementation, and approval of water pollution mitigations applicable only to their projects. Unlike in *Newhall*, that service was not provided to anyone else, and only affected priority project developers charged for the service. The service would not be provided to those not charged.[1413]

In addition, the Mitigation Fee Act, Government Code section 66000 et seq., also authorizes local agencies to impose development fees if certain requirements are met. As defined by the Act, a development fee is:

> . . . a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include . . . fees for processing applications for governmental regulatory actions or approvals[.][1414]

"[A] fee does not become a 'development fee' simply because it is made in connection with a development project. Rather, approval of the development project must be conditioned on payment of the fee."[1415] A development fee under the Act is one that is imposed to "defray[] all or a portion of the cost of public facilities related to the

---

[1411] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1412] See, for example, *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 569, where the court held that article XIII D prohibits MS4 permittees from charging property owners for the cost of providing trash receptacles at public transit locations in part because service was made available to the public at large.

[1413] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 592-593.

[1414] Government Code section 66000(b).

[1415] *California Building Industry Assn. v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 130.

development project."[1416] "'Public facilities' [broadly] includes public improvements, public services, and community amenities," and, thus, is not limited to capital outlay costs.[1417] The local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.[1418] Pollution prevention or abatement provides a public service,[1419] which falls within the Act's definition of a public facility.

The courts have also explained that the scope of a regulatory fee is somewhat flexible: a regulatory fee is valid as long as it relates to the overall purpose of the regulatory governmental action.[1420] The Third District Court of Appeal in *California Assn. of Prof. Scientists v. Department of Fish & Game (Professional Scientists)* has identified the following general rules:

> General principles have emerged. Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A, section 4 analysis if the " ' "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." ' " (Citation omitted.) "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." (Citation omitted.) "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." (Citation omitted.) Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. (Citation omitted.) Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee." (Citation omitted).[1421]

As indicated by the court in *Professional Scientists,* regulatory fees can include all those costs "incident to the issuance of the license or permit, investigation, inspection,

---

[1416] Government Code section 66000(b).

[1417] Government Code section 66000(d).

[1418] Government Code section 66001.

[1419] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 560.

[1420] *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 438, citing *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1421] *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

administration, maintenance of a system of supervision and enforcement."[1422] In *United Business Commission v. City of San Diego*, the court explained that regulatory fees include "all the incidental consequences that may be likely to subject the public to cost in consequence of the business licensed" and that the following incidental costs are properly included in a regulatory fee: "inspection of hazards, travel time, office supplies, telephone expenses, overhead, and clerk's time"[1423]

Here, the planning, inspection, and enforcement activities are "incident to the development permit[s] which permittees will issue to priority development projects and the administration of permittees' pollution abatement program"[1424] The proposed fee would be imposed as a condition for approving new real property development and redevelopment and based on the developer's application for government approval to proceed with the development. The fees would be not levied for an unrelated revenue purpose, can be fairly allocated among the fee payers, and the service is not provided to those not charged.[1425] Such fees are not taxes under Proposition 26 when they are charges imposed as a condition of property development.[1426]

In addition, there is no evidence in the record indicating that the claimants cannot levy a fee that will bear a reasonable relationship to the burdens created by future priority development. "A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors.[1427] The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors.[1428] Thus, permissible fees must be related to the overall cost of the governmental regulation. They need not be finely calibrated to the precise benefit each individual fee payor might derive, or the precise burden each payer may create. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. "An excessive fee that is

---

[1422] *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1423] *United Business Commission v. City of San Diego* (1979) 91 Cal.App.3d 156, 166, footnote 2.

[1424] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1425] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 562-563, citing *California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046, which cited *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 881; see also *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 588.

[1426] California Constitution, article XIII C, section 1(e)(6).

[1427] *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 194.

[1428] *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 948.

used to generate general revenue becomes a tax."[1429] And "No one is suggesting [that the claimants] levy fees that exceed their costs."[1430]

However, in comments on the Draft Proposed Decision, the claimants allege that the requirements at issue do not directly apply to any particular development project, but instead require the permittees to review general plans, zoning codes, ordinances, conditions of approval and development project guidance to eliminate barriers to implementing LID principles; educate property owners to use pollution prevention BMPs; update the WQMP to address LID and HCOC [hydrologic condition of concern] principles, and LID site design principles; develop technically based feasibility criteria for the implementation of LID BMPs; create a database to track the operation and maintenance of structural post-construction BMPs; and develop an inspection frequency for new development and significant redevelopment projects based on the project type and the type of structural post construction BMPs deployed. Citing to *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, the claimants assert these activities "redound to the benefit of all" and, thus, the costs cannot be recovered from regulatory fees.[1431]

The Commission disagrees with the claimants' arguments. As explained above, the activities at issue here, including the planning, inspection, and enforcement activities all fall under the requirements for new development and significant redevelopment programs and are "incident to the development permit[s] which permittees will issue to priority development projects and the administration of permittees' pollution abatement program."[1432, 1433] As the courts have explained, a regulatory fee may be imposed

---

[1429] *California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 438.

[1430] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 402.

[1431] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 31-33.

[1432] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1433] See e.g., Exhibit A, Test Claim, filed January 31, 2011, pages 208 ("ensure that appropriate BMPs to reduce erosion and mitigate Hydromodification are included"), 211 (review the General Plan and related documents "to eliminate any barriers to implementation of the LID principles and HCOC"), 213 ("The primary objective of the WQMP, by addressing Site Design, Source Control and Treatment Control BMPs applied on a regional, sub-regional or site specific basis, is to ensure that the land use approval process of each Co-Permittee will minimize Pollutant loads in Urban Runoff from maps or permits for which discretionary approval is given"), 217 ("update the WQMP to address LID principles and HCOC" and "incorporate LID site design principles into the revised WQMP to reduce runoff"), 218 (revise local laws and building standards to promote LID design principles), 220 (ensure that new development and significant redevelopment projects "do not pose a HCOC [hydrologic condition of concern] due to increased runoff volumes and velocities").

under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation, and such costs include "all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement."[1434]

This issue is no different than the 2022 *Department of Finance* case, which found that the permittees had regulatory fee authority sufficient to pay the costs of hydromodification and LID *planning* at a time when there were no developers or property owners to charge.[1435] In addition, a regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors. "The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors."[1436] The fee just has to be related to the overall cost of the governmental regulation.

Moreover, the claimants' reliance on *Newhall* and the 2021 *Department of Finance* case (*Municipal Stormwater and Urban Runoff Discharges*) is misplaced. In *Newhall*, the issue was whether rates that a public water wholesaler of imported water charged to four public retail water purveyors violated Proposition 26.[1437] Part of the wholesaler's rates consisted of a fixed charge based on each retailer's rolling average of demand for the wholesaler's imported water and for groundwater which was not supplied by the wholesaler. Although the wholesaler was required to manage groundwater supplies in the basin, it did not sell groundwater to the retailers.[1438] The court determined the rates did not qualify as fees under Proposition 26. As indicated above, Proposition 26 states a levy is not a tax where it is imposed "for a specific government service provided directly to the payor that is not provided to those not charged . . . ." The only specific government service the wholesaler provided to the retailers was imported water. It did not provide groundwater, and the groundwater management activities it provided were not services provided just to the retailers. Instead, those activities "redound[ed] to the benefit of all groundwater extractors in the Basin[.]"[1439] The wholesaler could not base its fee and allocate its costs based on groundwater use because the wholesaler's

---

[1434] *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945.

[1435] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1436] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590; see also *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 945 (Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers).

[1437] *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430.

[1438] *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1434-1440.

[1439] *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.

groundwater management activities were provided to those who were not charged with the fee.[1440]

Similarly, the 2021 *Department of Finance* case (*Municipal Stormwater and Urban Runoff Discharges*) addressed property-related fees under Proposition 218 as they relate to the transit trash requirements. Under Proposition 218, or article XIII D, section 6, the proponent of a property-related fee has to also establish that the fee is not for general governmental services; where the service is available to the public at large in substantially the same manner as it is to property owners. The court found that Proposition 218 prohibits MS4 permittees from charging property owners for the cost of providing trash receptacles at public transit locations in part because the service was made available to the public at large.

> . . . common sense dictates that the vast majority of persons who would use and benefit from trash receptacles at transit stops are not the owners of adjacent properties but rather pedestrians, transit riders, and other members of the general public; any benefit to property owners in the vicinity of bus stops would be incidental. Even if the state agencies could establish that the need for the trash receptacles is in part attributable to adjacent property owners and that the property owners would use the trash receptacles (see Cal. Const., art. XIII D, § 6, subd. (b)(3)-(4)), the placement of the receptacles at public transit stops makes the "service available to the public at large in substantially the same manner as it is to property owners" (id., art. XIII D, § 6, subd. (b)(3)). The state agencies, therefore, failed to establish that the local governments could impose on property owners adjacent to transit stops a fee that could satisfy these constitutional requirements.[1441]

This case is different. The service provided directly to developers and property owners are the LID and hydromodification plans to assist in the preparation, implementation, and approval of water pollution mitigations for new development and redevelopment projects, and the continuing enforcement of those mitigations. Unlike *Newhall* and *Department of Finance*, that service is not provided to anyone else, and only affected developers and property owners will be charged for the service. The service will not be provided to those not charged. Even if the citizens of Riverside County receive some indirect benefit from this service, as suggested by the claimants, that does not make the fee a tax under the plain language of Proposition 26. Fees are not taxes under Proposition 26 when they are charges for a benefit conferred or privilege granted,[1442] for a government service or product provided to the payor and not others,[1443] reasonable

---

[1440] *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.

[1441] *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 568-569.

[1442] California Constitution, article XIII C, section 1(e)(1).

[1443] California Constitution, article XIII C, section 1(e)(2).

regulatory fees for permits,[1444] and charges imposed as a condition of property development.[1445]

The claimants also allege they do not have the authority to impose fees on new development and significant redevelopment projects *after* a specific project is constructed and therefore the post-construction activities, including maintaining a database of post-construction BMPs, do not provide a benefit to the owners or operators of those projects.[1446] However, as indicated above, the post-construction activities fall within those categories of costs that are incidental to the building permits being issued by the claimants on new development and significant redevelopment projects and are needed to ensure that the permittees verify and inspect the post-construction structural BMPs on those projects, and that the requirements are enforced. There is no support in the law or evidence in the record that the claimants could not impose a fee on the owners of priority development projects, which bears a reasonable relationship to the burdens created by those projects, to ensure the BMPs that were approved in the permitting process for those projects are adequately maintained. The fact that the claimants already issued permits on new development and significant redevelopment projects does not defeat their *authority* to impose a fee to enforce BMPs after construction is complete. A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors. "The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payors." [1447] The fee just has to be related to the overall cost of the governmental regulation. This issue is no different than the 2022 *Department of Finance* case, which found that the permittees had regulatory fee authority sufficient to pay the costs of hydromodification and LID planning at a time when there were no developers or property owners to charge.[1448] Moreover, the service is being provided directly to the owners of new development and significant redevelopment projects to ensure the BMPs on their properties are operating effectively and are adequately maintained; the service is not provided to those not charged.[1449]

Based on this authority, the claimants in this case have regulatory and developer fee authority under their police powers and the Mitigation Fee Act sufficient as a matter of law to cover the costs of the new state-mandated requirements related to the new

---

[1444] California Constitution, article XIII C, section 1(e)(3).

[1445] California Constitution, article XIII C, section 1(e)(6).

[1446] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 33.

[1447] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1448] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 590.

[1449] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 592-593.

development and significant redevelopment activities (Sections XII.A.5, XII.C.1, XII.D.1, XII.E.1-4, XII.E. 6-9, XII.F.1, XII.F.2, and XII.G.1) and structural post-construction BMP tracking and inspections (Sections XII.K.4 and XII.K.5), pursuant to Government Code section 17556(d) and, thus, there are no costs mandated by the state for these requirements.

iv. The claimants do not have regulatory authority to impose fees to comply with the requirements in Section XII.B to develop and implement a Watershed Action Plan because there is no evidence in the law or the record that the Regional Board intended the Watershed Action Plan requirements to provide a service or benefit to the developer or property owner.

The purpose of the requirement in Section XII.B to develop and implement a Watershed Action Plan is "to address watershed scale water quality impacts of urbanization in the Permit Area associated with Urban TMDL WLAs, stream system vulnerability to Hydromodification from Urban Runoff, cumulative impacts of development on vulnerable streams, preservation of Beneficial Uses of streams in the Permit Area, and protection of water resources, including groundwater recharge areas."

As discussed above, the court in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 found that NPDES permit requirements to develop and implement a hydromodification management plan and add low impact development (LID) requirements to stormwater mitigation plans constituted incidental expenses of regulating development and therefore the permittees had regulatory fee authority under their police powers to pay for those activities.[1450] In reaching that conclusion, the court rejected the claimants' argument, which relied on *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451, that Proposition 26 prevented them from levying a fee to recover the cost of preparing the plans because those activities benefited the public at large and therefore constituted a tax.[1451] Under Proposition 26, a levy is *not* a tax when it is imposed for a specific governmental service that is provided directly to the payor and is not provided to those not charged.[1452]

In *Newhall*, the court determined that rates charged by a public water wholesaler to retail water purveyors, which consisted of a fixed charge based on each retailer's rolling

---

[1450] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 586-593.

[1451] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 592.

[1452] California Constitution, article XIII C, section 1(e)(2) (a levy is not a tax where, among other uses, it is imposed "for a specific government service provided directly to the payor that is not provided to those not charged…"). See, for example, *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 569, where the court held that article XIII D prohibits MS4 permittees from charging property owners for the cost of providing trash receptacles at public transit locations in part because service was made available to the public at large.

average of demand for the wholesaler's imported water and for groundwater not supplied by the wholesaler but which it was required to manage, did not quality as fees under Proposition 26. Because the only specific government service provided by the wholesaler to the retailers was imported water, the court found that the groundwater management activities were not services provided *only* to the retailers but rather "redound[ed] to the benefit of all groundwater extractors in the Basin."[1453]

> Certainly the Agency may recover through its water rates its entire cost of service–that is undisputed. The only question is whether those costs may be allocated, consistent with Proposition 26, based in substantial part on groundwater use. They may not, because the Agency's groundwater management activities plainly are not a service "that is not provided to those not charged...." (Art. XIII C, § 1, subd. (e)(2).)[1454]

The court in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 reasoned that unlike in *Newhall*, the service provided directly to developers of priority development projects was the preparation, implementation, and approval of water pollution mitigations applicable *only* to their projects, and that service was not provided to anyone else, and only affected priority project developers charged for the service.[1455]

Here, the Watershed Action Plan is distinguishable from the hydromodification management plan and LID requirements at issue in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535. The Watershed Action Plan is a stormwater management plan, the development and implementation of which require the permittees to perform stormwater management activities that do not provide a direct service to developers of new development and significant redevelopment projects. The Watershed Action Plan integrates development planning and approval processes with water quality control measures on a "per-site, neighborhood and municipal basis" to "address watershed scale water quality impacts of urbanization in the Permit Area associated with Urban TMDL WLAs, stream system vulnerability to Hydromodification from Urban Runoff, cumulative impacts of development on vulnerable streams, preservation of Beneficial Uses of streams in the Permit Area, and protection of water resources, including groundwater recharge areas.[1456] In other words, the Watershed Action Plan requirements are intended to more effectively manage the impacts of urbanization, including development, on water quality and stream stability

---

[1453] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 593, quoting *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.

[1454] *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.

[1455] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 592-593.

[1456] Exhibit A, Test Claim, filed January 31, 2011, pages 209-210 (test claim permit, Sections XII.B.1, XII.B.2).

throughout the permit area, through an integrated and coordinated watershed management approach.[1457] The Watershed Action Plan requires the permittees to look at regional BMP approaches to address hydromodification and figure out how regional efforts to improve water quality connect to the permittees' own urban runoff management plans; to create a map of all streams and channels within the permit area that are susceptible to hydromodification as a result of new development and significant redevelopment projects; to develop and implement a hydromodification management plan; to identify impaired waterbodies with urban runoff pollutant sources, existing monitoring programs and BMPs addressing those pollutants; to develop and implement a watershed geodatabase of the impaired waters, MS4 facilities, critical habitat preserves, and stream channels that are vulnerable to hydromodification; to incorporate the Watershed Action Plan into the regionwide and jurisdictional urban runoff management program documents (i.e., the Drainage Area Management Plan and the Local Implementation Plans); train permittee staff on the Watershed Action Plan; provide outreach and education to the development community on the watershed geodatabase; and to invite participation and comments on the watershed geodatabase.[1458]

None of these Watershed Action Plan activities provide a direct service to the proponents of new development or significant redevelopment projects, nor are they applicable *only* to their projects. Rather, the purpose of the Watershed Action Plan is to manage the cumulative impacts of urban development on water quality and water resources throughout the permit area and thus consists of urban runoff management activities that affect the region as a whole.

Furthermore, while developing a hydromodification management plan (HMP) is a component of the Watershed Action Plan activities, the HMP here is not like the HMP at issue in *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535. There, the HMP requirements were imposed *only* on proponents of priority development projects and identified specific standards and other performance criteria that the development projects had to meet to control erosion and runoff.[1459] Here, the HMP referred to in Section XII.B is a watershed management planning document, which the permittees will use to manage hydromodification *throughout the watershed* ("on a per project, sub-watershed, and watershed basis") by identifying potential causes of stream degradation; establishing monitoring sites; and prioritizing actions based on drainage features, susceptibility, risk assessments, and opportunities for restoration.[1460] The HMP requirements here are limited to planning activities that

---

[1457] Exhibit A, Test Claim, filed January 31, 2011, page 209 (Section XII.B.1).

[1458] Exhibit A, Test Claim, filed January 31, 2011, page 209-211 (test claim permit, Sections XII.B.1 through XII.B.10).

[1459] Exhibit N (3), Excerpt from Amended Decision on Remand, 07-TC-09-R, adopted May 26, 2023, pages 2-7.

[1460] Exhibit A, Test Claim, filed January 31, 2011, page 210 (test claim permit, Section XII.B.5).

impact the permit area as a whole, on a watershed basis, and do not provide a direct service to the proponents of new development or significant redevelopment projects.

Thus, there is no evidence in the law or the record that the Regional Board intended the Watershed Action Plan requirements to provide a service or benefit to the developer or property owner or have anything to do with issuing building permits. Similar to *Newhall*, where the court found that a public water wholesaler could not charge a fee that included the cost of performing groundwater management activities because those activities were not services provided *only* to the retailers but rather "redound[ed] to the benefit of all groundwater extractors in the Basin,"[1461] here, the permittees cannot charge a fee to perform watershed-based stormwater management activities.

Accordingly, the Commission finds that the claimants do not have regulatory authority to impose fees to comply with the requirements in Section XII.B to develop and implement a Watershed Action Plan.

c. The County and cities do **not** have authority to levy property-related fees within the meaning of Government Code section 17556(d) when voter approval of the fee is required by article XIII D of the California Constitution (Proposition 218) and, thus, from January 29, 2010, 2010, to December 31, 2017, there are costs mandated by the state for the remaining new mandated activities related to the Local Implementation Plans (Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A); the proactive illicit discharge detection and elimination program (Sections IX.D, IX.H, and Appendix 3, Section III.E.3); the septic system database (Section X.D); the Watershed Action Plan (Section XII.B); employee training (Sections XV.C, XV.F.1, XV.F.4, and XV.F.5); and urban runoff management program assessment (Section XVII.A.3). However, there are **no** costs mandated by the state within the meaning of Government Code section 17556(d) for these activities, beginning January 1, 2018, when, based on the plain language of SB 231, stormwater property-related fees became exempt from the voter approval requirements of article XIII D (Proposition 218).

The remaining new mandated activities relate to Local Implementation Plans (Sections IV, VI.D.1.a.vii, VI.D.1.c.i(8), VI.D.2.c, VI.D.2.d.ii(d), VI.D.2.i, VII.B, VII.D.2, VIII.A, VIII.H, IX.C, IX.D, XII.A.1, XII.H, XIV.D, and XV.A); the proactive illicit discharge detection and elimination program (Sections IX.D, IX.H, and Appendix 3, Section III.E.3); the septic system database (Section X.D); the Watershed Action Plan (Section XII.B); employee training (Sections XV.C, XV.F.1, XV.F.4, and XV.F.5); and urban runoff management program assessment (Section XVII.A.3).

[1461] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 593, quoting *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1451.

The claimants have constitutional police power (Cal. Const., art. XI, § 7) and statutory authority to impose property-related fees for these remaining new state mandated activities.[1462] An example of such a property-related stormwater fee that covers the costs of complying with applicable local, state, and federal stormwater regulations, which would include the activities here, is the property-related fee adopted in 2014 by the City of San Clemente (which is not a permittee under the test claim permit), in effect from February 7, 2014 through June 30, 2020.[1463] Additionally, the declaration submitted by the City of Hemet in support of the test claim states that the City has "a sewer and storm drain fee that is used in part" to fund the test claim permit activities.[1464]

The claimants contend they have no authority to impose property-related fees to cover the costs of the remaining activities and, thus, there are costs mandated by the state.[1465]

The Water Boards assert that the claimants have the necessary fee authority and are not entitled to reimbursement.[1466] The Water Boards cite to *Connell v. Superior Court* (1997) 59, Cal.App.4th 382, 401; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812; and *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195 to support their position that "fee authority is purely a question of legal authorization," meaning that "[e]ven where Proposition 218 super-imposes a voter approval provision on fees to pay for specific state mandates, the claimants' authority nonetheless exists and expenditures for mandates are not reimbursable."[1467] The Water Boards characterize Proposition 218 as a power sharing measure between local property owners and local government, which does not deprive the local government of its fee authority, and explain that while *Paradise Irrigation* "did not consider whether a local agency has fee authority as a legal matter where fees or assessments are subject to voter approval requirements," the court's reasoning applies

---

[1462] See, e.g., Health and Safety Code section 5471 (fees for storm drainage maintenance and operation); Government Code sections 38902 (providing for sewer standby charges); 53750 et seq. (Proposition 218 Omnibus Implementation Act, describing procedures for adoption of assessments, fees and charges); 53751 (as amended in 2017, providing that fees for sewer services includes storm sewers).

[1463] Exhibit N (2), City of San Clemente Municipal Code, title 13, chapter 13.34, sections 13.34.010-13.34.030.

[1464] Exhibit A, Test Claim, filed January 31, 2011, page 96 (Declaration of Kristen Jensen, Public Works Director for the City of Hemet, dated March 20, 2017).

[1465] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 34-41.

[1466] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, page 4.

[1467] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, pages 2-3.

with equal force where Proposition 218 requires pre-approval by a majority vote of the affective property owners (or, alternatively, but a two-thirds vote of the electorate)."[1468]

Finance also contends that the claimants have fee authority sufficient as a matter of law to cover all costs mandated by the state within the meaning of Government Code section 17556(d), and that the fee authority is undiminished by Proposition 218.[1469]

As described below, the Commission finds that the County and cities have authority to impose stormwater property-related fees for the remaining new mandated activities identified above, subject to article XIII D (Proposition 218), which until January 1, 2018, required voter approval before fees could be charged. Government Code section 17556(d) does not apply to deny a claim when voter approval of the fee is required from January 29, 2010, the beginning date of the potential period of reimbursement, to December 31, 2017.[1470] However, beginning January 1, 2018, SB 231 exempted property-related stormwater fees from the voter approval requirement of article XIII D (Proposition 218), which then makes only the voter protest provisions of article XIII D apply to property-related stormwater fees.[1471]

i. The Commission is required to find that Government Code section 17556(d) does not apply when local government authority to impose property-related fees is subject to voter approval under article XIII D of the California Constitution. However, there are no costs mandated by the state pursuant to Government Code section 17556(d) when the voter protest provisions of article XIII D apply.

Article XIII D, as added by Proposition 218 "imposes certain substantive and procedural restrictions on taxes, assessments, fees, and charges 'assessed by any agency upon any parcel of property or upon any person as an incident of property ownership.'"[1472] Specifically, assessments and property-related fees are subject to notice and hearing requirements, and must meet a threshold of proportionality with respect to the amount of the exaction and the purposes to which it is put. Section 4, addressing assessments, provides:

> An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by

[1468] Exhibit M, Water Boards' Comments on the Draft Proposed Decision, filed January 11, 2024, pages 3-4.

[1469] Exhibit L, Finance's Comments on the Draft Proposed Decision, filed January 5, 2024, page 1.

[1470] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581.

[1471] Government Code sections 53750, 53751 (amended by Statutes 2017, chapter 536 (SB 231)).

[1472] *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1200 citing California Constitution, article XIII D, section 3).

> each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.[1473]

Once the amount of the proposed assessment is identified, notice must be mailed to the record owner of each parcel, stating the amount chargeable to the entire district, to the parcel itself, the reason for the assessment and the basis of the calculation, and the date, time and location of the public hearing on the proposed assessment. The notice must be in the form of a ballot, and at the public hearing the agency "shall consider all protests…and tabulate the ballots." If the majority of the returned ballots oppose the assessment, the agency "shall not impose" the assessment.[1474]

Similarly, section 6 provides for a proportionality requirement with respect to property-related fees and charges:

> A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:
>
> (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
>
> (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
>
> (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
>
> (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.
>
> (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the

[1473] California Constitution, article XIII D, section 4(a).

[1474] California Constitution, article XIII D, section 4(c)-(e).

> same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.[1475]

And, section 6 provides for notice and a public hearing similarly to section 4; but, unlike section 4, section 6 does not expressly require the notice to inform parcel owners of their right to protest the proposed fee, nor is the notice required to be in the form of a ballot to be returned.[1476]

Finally, section 6(c) also provides that voter approval is required for property-related fees and charges *other than* for water, sewer, and refuse collection services.[1477]

Many of the limitations stated in Proposition 218 are not new, as most special assessment acts under prior law required notice and a public hearing, and many such acts also provided for majority protest of affected parcel owners to defeat a proposed assessment.[1478] Despite the existence of such limitations before Proposition 218, the court in *County of Placer v. Corin* held that assessments were sufficiently distinct from taxes as to be outside the scope of articles XIII A and XIII B.[1479]

After Proposition 218 came *Apartment Assn. of Los Angeles County, Richmond*, and *Bighorn-Desert View*.[1480] In each of these cases, the California Supreme Court narrowly construed the procedural and substantive limitations of article XIII D. In *Apartment Assn.*, the Court rejected a challenge under article XIII D, section 6 to the city's ordinance imposing fees on residential rental properties, finding that the fees were not "imposed by an agency upon a parcel or upon a person as *an incident of property ownership*…"[1481] The Court held that Proposition 218 imposes restrictions on taxes, assessments, fees, and charges only "when they burden landowners as

---

[1475] California Constitution, article XIII D, section 6(b).

[1476] Compare California Constitution, article XIII D, section 6(a)(1)-(2) with article XIII D, section 4(a).

[1477] California Constitution, article XIII D, section 6(c).

[1478] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 454, footnote 9.

[1479] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 454, footnote 9.

[1480] *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409; *Bighorn-Desert View Water Agency v. Verjill* (2006) 39 Cal.4th 205.

[1481] California Constitution, article XIII D, sections 2(e) and 3, emphasis added; *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 841-842.

landowners."[1482] The residential rental fee ordinance at issue "imposes a fee on its subjects by virtue of their ownership of a business — i.e., because they are landlords," and, thus, the fee was not subject to the requirements of article XIII D.[1483]

In *Richmond*, the District imposed a "capacity charge" on applicants for *new* water service connections, and thus could not prospectively identify the parcels to which the charge would apply; that is, it could not have complied with the procedural requirements of notice and hearing under article XIII D, section 4. The Court held that the impossibility of compliance with section 4 was one reason to find that the capacity charge was not an assessment, within the meaning of article XIII D.[1484] The Court also found that the charge was to be imposed on applicants for new service, rather than users receiving service through existing connections, and that that distinction is consistent with the overall intent of Proposition 218, to promote taxpayer consent.[1485] Accordingly, the Court concluded: "Because these fees are imposed only on the self-selected group of water service applicants, and not on real property that the District has identified or is able to identify, and because neither fee can ever become a charge on the property itself, we conclude that neither fee is subject to the restrictions that article XIII D imposes on property assessments and property-related fees."[1486]

In *Bighorn-Desert View*, the Court rejected a local initiative designed to impose a voter approval requirement on all future rate increases for water service,[1487] finding that article XIII D, section 6's express *exemption* from voter approval for sewer, water, and refuse collection "would appear to embody the electorate's intent as to when voter-approval should be required, or not required."[1488] The Court concluded:

> [U]nder section 3 of California Constitution article XIII C, local voters by initiative may reduce a public agency's water rate and other delivery charges, but…[article XIII C, section 3] does not authorize an initiative to impose a requirement of voter preapproval for future rate increases or new charges for water delivery. In other words, by exercising the initiative power voters may decrease a public water agency's fees and charges for water service, but the agency's governing board may then raise other fees or impose new fees without prior approval. Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good faith, and that the political process

---

[1482] *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842, emphasis in original.

[1483] *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842.

[1484] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 419.

[1485] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 420.

[1486] *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 430.

[1487] *Bighorn-Desert View Water Agency v. Verjill* (2006) 39 Cal.4th 205, 219.

[1488] *Bighorn-Desert View Water Agency v. Verjill* (2006) 39 Cal.4th 205, 218-219.

> will eventually lead to compromises that are mutually acceptable and both financially and legally sound. (See *DeVita v. County of Napa, supra,* 9 Cal.4th at pp. 792–793, 38 Cal.Rptr.2d 699, 889 P.2d 1019 ["We should not presume ... that the electorate will fail to do the legally proper thing."].) We presume local voters will give appropriate consideration and deference to a governing board's judgments about the rate structure needed to ensure a public water agency's fiscal solvency, and we assume the board, whose members are elected (see Stats. 1969, ch. 1175, § 5, p. 2274, 72B West's Ann. Wat.-Appen., *supra,* ch. 112, p. 190), will give appropriate consideration and deference to the voters' expressed wishes for affordable water service. The notice and hearing requirements of subdivision (a) of section 6 of California Constitution article XIII D will facilitate communications between a public water agency's board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers' concerns that the agency's water delivery charges are excessive.[1489]

In 2019, the Third District Court of Appeal issued its decision in *Paradise Irrigation District*, which directly addressed (in the context of water services) whether local governments are without authority to impose new fees in light of the voter protest provisions of Proposition 218, and that mandate reimbursement was therefore warranted.[1490] The court observed:

> This case takes up where *Connell* left off, namely with the question of whether the passage of Proposition 218 undermined water and irrigation districts' authority to levy fees so that they are entitled to subvention for state-mandated regulations requiring water infrastructure upgrades. The Water and Irrigation Districts do not argue this court wrongly decided *Connell, supra,* 59 Cal.App.4th 382, 69 Cal.Rptr.2d, but only that the rule of decision was superseded by Proposition 218. Consequently, we proceed to examine the effect of Proposition 218 on the continuing applicability of *Connell.*[1491]

Ultimately the court preserved and followed the rule of *Connell*, finding, based in large part on a discussion of *Bighorn-Desert View*, that "Proposition 218 implemented a power-sharing arrangement that does not constitute a revocation of the Water and Irrigation Districts' fee authority."[1492] The court held, "[c]onsistent with the California Supreme Court's reasoning in *Bighorn*, we presume local voters will give appropriate

---

[1489] *Bighorn-Desert View Water Agency v. Verjill* (2006) 39 Cal.4th 205, 220-221.

[1490] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 189.

[1491] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 189.

[1492] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194-195.

consideration and deference to state mandated requirements relating to water conservation measures required by statute."[1493] In addition, the court held "[w]e also reject the Water and Irrigation Districts' claim that, as a matter of practical reality, the majority protest procedure allows water customers to defeat the Districts' authority to levy fees."[1494] However, the court said, "[w]e adhere to our holding in *Connell* that the inquiry into fee authority constitutes an issue of law rather than a question of fact."[1495] The court found that water service fees, being expressly exempt from the voter approval provisions of article XIII D, section 6(c), therefore do not require voter preapproval, as would new taxes.[1496] In addition, the court followed and relied upon *Bighorn-Desert View*'s analysis of a power-sharing relationship between local agencies and their constituents, including the presumption that "local voters will give appropriate consideration and deference to a governing board's judgments about the rate structure needed to ensure a public water agency's fiscal solvency…" and that the notice and hearing requirements of article XIII D, section 6(a) "will facilitate communications between a public water agency's board and its customers, and the substantive restrictions on property-related charges in subdivision (b) of the same section should allay customers' concerns that the agency's water delivery charges are excessive."[1497] Accordingly, the court found that that power-sharing arrangement "does not undermine the fee authority that the districts have," and the majority protest procedure of article XIII D, section 6(a) "does not divest the Water and Irrigation Districts of their authority to levy fees."[1498] The court noted that statutory protest procedures already existed, and "the possibility of a protest under article XIII D, section 6 does not eviscerate the Water and Irrigation Districts' ability to raise fees to comply with the Water Conservation Act."[1499] Thus, the court found that Government Code section 17556(d) still applies to deny a claim when the fee authority is subject to voter protest under article XIII D, section 6(a).

[1493] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194.

[1494] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

[1495] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

[1496] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 192.

[1497] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 192-193.

[1498] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194.

[1499] *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 194.

The court in *Paradise Irrigation District* did not analyze whether Government Code section 17556(d) applies when voter approval is required.

Recently, in 2022, the Third District Court of Appeal addressed the voter approval issue in *Department of Finance v. Commission on State Mandates* (*Discharge of Stormwater Runoff*) and found that Government Code section 17556(d) does not apply when voter approval is required and, thus, there are costs mandated by the state.[1500] The court's reasoning is as follows:

> The State contends the reasoning in *Paradise Irrigation Dist*. applies equally here where article XIII D requires the voters to preapprove fees. It argues that as with the voter protest procedure, under article XIII D permittees' governing bodies and the voters who elected those officials share power to impose fees. The governing bodies propose the fee, and the voters must approve it. The "fact that San Diego property owners could theoretically withhold approval—just as a majority of the governing body could theoretically withhold approval to impose a fee—does not 'eviscerate' San Diego's police power; that power exists regardless of what the property owners, or the governing body, might decide about any given fee."
>
> The State's argument does not recognize a key distinction we made in *Paradise Irrigation Dist*.: water service fees were not subject to voter approval. We contrasted article XIII D's protest procedure with the voter-approval requirement imposed by Proposition 218 on new taxes. Under article XIII C, no local government may impose or increase any general or special tax "unless and until that tax is submitted to the electorate and approved" by a majority of the voters for a general tax and by a two-thirds vote for a special tax. (Cal. Const., art. XIII C, § 2, subds. (b), (d).) Under article XIII D, however, water service fees do not require the consent of the voters. (Cal. Const., art. XIII D, § 6, subd. (c).) (*Paradise Irrigation Dist., supra*, 33 Cal.App.5th at p. 192, 244 Cal.Rptr.3d 769.) The implication is the voter approval requirement would deprive the districts of fee authority.
>
> Since the fees in *Paradise Irrigation Dist*. were not subject to voter approval, the protest procedure created a power sharing arrangement like that in *Bighorn* which did not deprive the districts of their fee authority. In *Bighorn*, the power-sharing arrangement existed because voters could possibly bring an initiative or referendum to reduce charges, but the validity of the fee was not contingent on the voters preapproving it. In *Paradise Irrigation Dist.*, the power-sharing arrangement existed because voters could possibly protest the water fee, but the validity of the fee was not contingent on voters preapproving the fee. The water fee was valid unless the voters successfully protested, an event the trial court in

[1500] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581.

Paradise Irrigation Dist. correctly described as a "speculative and uncertain threat." (*Paradise Irrigation Dist., supra*, 33 Cal.App.5th at p. 184, 244 Cal.Rptr.3d 769.)

Here, a fee for stormwater drainage services is *not* valid unless and until the voters approve it. For property-related fees, article XIII D limits permittees' police power to proposing the fee. Like article XIII C's limitation on local governments' taxing authority, article XIII D provides that "[e]xcept for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." (Cal. Const., art. XIII D, § 6, subd. (c).) The State's argument ignores the actual limitation article XIII D imposes on permittees' police power. Permittees expressly have no authority to levy a property-related fee unless and until the voters approve it. There is no power sharing arrangement.

This limitation is crucial to our analysis. The voter approval requirement is a primary reason Section 6 exists and requires subvention. As stated earlier, the purpose of Section 6 "is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) And what are those limitations? Voter approval requirements, to name some.

Articles XIII A and XIII B "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento, supra*, 50 Cal.3d at p. 59, fn. 1, 266 Cal.Rptr. 139, 785 P.2d 522.) Article XIII A prevents local governments from levying special taxes without approval by two-thirds of the voters. (Cal. Const., art. XIII A, § 4.) It also prevents local governments from levying an ad valorem tax on real and personal property. (Cal. Const., art. XIII A, § 1.) Article XIII B, adopted as the "next logical step" to article XIII A, limits the growth of appropriations made from the proceeds of taxes. (Cal. Const., art. XIII B, §§ 1, 2, 8; *City Council v. South* (1983) 146 Cal.App.3d 320, 333-334, 194 Cal.Rptr. 110.) And, as stated above, article XIII C extends the voter approval requirement to local government general taxes. (Cal. Const., art. XIII C, § 2, subd. (b).)

Subvention is required under Section 6 because these limits on local governments' taxing and spending authority, especially the voter approval requirements, deprive local governments of the authority to enact taxes to pay for new state mandates. They do not create a power-sharing arrangement with voters. They limit local government's authority to

> proposing a tax only, a level of authority that does not guarantee resources to pay for a new mandate. Section 6 provides them with those resources.
>
> Article XIII D's voter approval requirement for property-related fees operates to the same effect. Unlike the owner protest procedure at issue in *Paradise Irrigation Dist.*, the voter approval requirement does not create a power sharing arrangement. It limits a local government's authority to proposing a fee only; again, a level of authority that does not guarantee resources to pay for a state mandate. Section 6 thus requires subvention because of Article XIII D's voter approval requirement. Contrary to the State's argument, *Paradise Irrigation Dist*. does not compel a different result.[1501]

Thus, after *Paradise Irrigation District* and the 2022 *Department of Finance* case, Government Code section 17556(d) does not apply and there are costs mandated by the state when local government authority to impose property-related fees is subject to voter approval under article XIII D of the California Constitution. However, there are no costs mandated by the state pursuant to Government Code section 17556(d) when the voter protest provisions of article XIII D apply.

ii. Government Code sections 53750 and 53751, as amended by Senate Bill 231 effective January 1, 2018, exempt stormwater fees from the voter approval requirement of article XIII D of the California Constitution and the Commission is required to presume that SB 231 is constitutional. Thus, beginning January 1, 2018, stormwater fees are subject only to the voter protest provisions of article XIII D and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(d).

As indicated above, article XIII D, section 6(c) provides that voter approval is required for property-related fees and charges *other than* for water, sewer, and refuse collection services. Thus, for water, sewer, and refuse collection, only the voter protest provisions apply before fees can be imposed.

In 2002, the Sixth District Court of Appeal in *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351 held that "sewer," for purposes of the voter approval exemption in article XIII D does *not* include storm sewers or storm drains.[1502] *City of Salinas* involved a challenge to a "storm drainage fee" imposed by the City of Salinas in order to fund its efforts "to reduce or eliminate pollutants contained in storm water, which was channeled into a drainage system separate from the sanitary and

---

[1501] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 579-581.

[1502] *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1358-1359.

industrial waste systems," as required by the CWA.[1503] The fee was imposed on owners of developed parcels of property, and the amount "was to be calculated according to the degree to which the property contributed to runoff to the City's drainage facilities. That contribution, in turn, would be measured by the amount of the 'impervious area' on that parcel."[1504] Taxpayers challenged the imposition of the fee, arguing it was subject to voter approval under Proposition 218. The City argued the fee was exempt from the voter approval requirements because it was for "sewer" or "water" services under article XIII D, section 6(c). The court disagreed, and construed the term "sewer" narrowly, holding that "sewer" referred solely to "sanitary sewerage" (i.e., the system that carries "putrescible waste" from residences and businesses), and did not encompass a sewer system designed to carry only stormwater.[1505] It also held the term "water services" meant "the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants, carries it away, and discharges it into the nearby creeks, river, and ocean."[1506]

Thus, under the *City of Salinas* case, a local agency's charges on developed parcels to fund stormwater management were property-related fees that were not covered by Proposition 218's exemption for "sewer" or "water" services. Therefore, in order for local agencies to impose new or increased stormwater fees on property owners, an election and majority vote of the affected property owners or two-thirds of the electorate in the area was first required to affirmatively approve those fees.

That holding has since been the subject of legislation. In 2017, the Legislature enacted SB 231, which amended Government Code sections 53750 and 53751 to expressly overrule the 2002 *City of Salinas* case.[1507] Government Code section 53750(k) defines the term "sewer" for purposes of article XIII D as including systems that "facilitate sewage collection, treatment, or disposition for . . . drainage purposes, including . . . drains, conduits, outlets for . . . storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of . . . storm waters." Government Code section 53751 explains why the Legislature thinks the *City of Salinas* case is wrong:

> The court in *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351 failed to follow long-standing principles of statutory

---

[1503] *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1353.

[1504] *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1353.

[1505] *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1357-1358.

[1506] *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1358.

[1507] Government Code sections 53750, 53751 (amended, Stats. 2017, ch. 536 (SB 231)).

> construction by disregarding the plain meaning of the term "sewer." Courts have long held that statutory construction rules apply to initiative measures, including in cases that apply specifically to Proposition 218 (see *People v. Bustamante* (1997) 57 Cal.App.4th 693; *Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006). When construing statutes, courts look first to the words of the statute, which should be given their usual, ordinary, and commonsense meaning (*People v. Mejia* (2012) 211 Cal.App.4th 586, 611). The purpose of utilizing the plain meaning of statutory language is to spare the courts the necessity of trying to divine the voters' intent by resorting to secondary or subjective indicators. The court in *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351 asserted its belief as to what most voters thought when voting for Proposition 218, but did not cite the voter pamphlet or other accepted sources for determining legislative intent. Instead, the court substituted its own judgment for the judgment of voters.[1508]

The claimants contend, however, that SB 231 is unconstitutional on its face, as it "attempts to reinterpret the Constitution in contradiction of the intent of the voters when they adopted Proposition 218" and the Constitution cannot be modified by a legislative enactment.[1509] Because the "final word as to the validity of any statute purporting to interpret the California Constitution is left to the courts…the ultimate validity of SB 231 is not before the Commission" and it would be error for the Commission to rely on SB 231 in ruling against the claimants for costs expended after January 1, 2018.[1510] In support, the claimants make the following arguments:

- The plain language and structure of Proposition 218 do not support SB 231's definition of "sewer." The plain meaning of article XIII D, section 6(c) is that the term "sewer" or "sewer services" pertain only to sanitary sewers and not to MS4s. SB 231 attempts to expand the facilities and services covered by this term, and is "an invalid modification of Proposition 218 that seeks to override voter intent."[1511]
- The statutes and cases relied upon by the Legislature when enacting SB 231 "present only limited examples of how the term 'storm sewer' or 'sanitary sewer' were employed" and "in all, a distinction was drawn between sanitary sewers and storm sewers."[1512]

[1508] Government Code section 53751(f).

[1509] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, page 36.

[1510] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 35-36.

[1511] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 35-38.

[1512] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 38-40.

- There is significant evidence in the language of the ballot measure, the interpretation of the courts, and the prevailing legislative and judicial usage that the Legislature and the courts considered "sewers" to be different from "storm drains" prior to the adoption of Proposition 218. Thus, there was no "plain meaning" of "sewer" as a term that meant both sanitary and storm sewers.[1513]

The Commission is required by article III, section 3.5 of the California Constitution, however, to presume the validity of Government Code sections 53750 and 53751, as amended by SB 231, and, as the Third District Court of Appeal recently held, the amendments, absent a clear and unequivocal statement to the contrary, operate *prospectively* beginning January 1, 2018.[1514]

Accordingly, the County and cities have authority to impose stormwater property-related fees for the remaining new mandated activities identified above, subject to article XIII D (Proposition 218), which until January 1, 2018, required voter approval before fees could be charged. Government Code section 17556(d) does not apply to deny a claim when voter approval of the fee is required from January 29, 2010, the beginning date of the potential period of reimbursement, to December 31, 2017, and, thus, during this time period, there are costs mandated by the state.[1515] However, beginning January 1, 2018, SB 231 exempted property-related stormwater fees from the voter approval requirement of article XIII D (Proposition 218), which then makes only the voter protest provisions of article XIII D apply to property-related stormwater fees.[1516] Thus, beginning January 1, 2018, there are no costs mandated by the state and reimbursement is denied.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim only for the County of Riverside and the city co-permittees[1517], and finds that the

---

[1513] Exhibit K, Claimants' Comments on the Draft Proposed Decision, filed January 5, 2024, pages 40-41.

[1514] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 573-577.

[1515] *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 581.

[1516] Government Code sections 53750, 53751 (amended by Statutes 2017, chapter 536 (SB 231)).

[1517] On June 7, 2013, Order No. R8-2013-0024 amended the test claim permit to make three changes to the list of permittees: (1) remove Murrieta and Wildomar; (2); add the Cities of Eastvale and Jurupa Valley and (3) add all portions of the City of Menifee. The Cities of Murrieta and Wildomar are eligible claimants whose potential period of reimbursement ends June 6, 2013. The Cities of Eastvale and Jurupa Valley are not permittees under the test claim permit and are therefore not eligible to claim reimbursement. The City of Menifee's eligibility for reimbursement under the test claim permit is unaffected by the permit amendment. Exhibit N (1), California Regional Water

following activities impose a reimbursable state-mandated program from January 29, 2010, the beginning date of the potential period of reimbursement, to December 31, 2017:

A. Local Implementation Plans

1. Within six months of adoption of the test claim permit, the permittees shall develop a LIP template and submit for approval of the executive officer. The LIP template shall be amended as the provisions of the DAMP are amended to address the requirements of the test claim permit. The LIP template shall facilitate a description of the co-permittee's individual programs to implement the DAMP, including the organizational units responsible for implementation and identify positions responsible for urban runoff program implementation. The description shall specifically address the items enumerated in Sections IV.A.1 through IV.A.12 of the test claim permit (Section IV.A).[1518]
2. Within 12 months of approval of the LIP template, and amendments thereof, by the executive officer, each permittee shall complete a LIP, in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of the test claim permit (Section IV.B).[1519]
3. Revise the LIP as necessary, following an annual review and evaluation of the effectiveness of the urban runoff programs, in compliance with Section VIII.H of the test claim permit (Section IV.C).[1520]
4. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board (Section VI.D.1.a.vii).[1521]
5. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no

---

Quality Control Board, Santa Ana Region, Order No. R8-2013-0024, dated June 7, 2013.

[1518] Exhibit A, Test Claim, filed January 31, 2011, pages 178-180 (test claim permit, Section IV.A).

[1519] Exhibit A, Test Claim, filed January 31, 2011, page 180 (test claim permit, Section IV.B).

[1520] Exhibit A, Test Claim, filed January 31, 2011, page 181 (test claim permit, Section IV.C).

[1521] Exhibit A, Test Claim, filed January 31, 2011, page 186 (test claim permit, Section VI.D.1.a.vii).

more than 180 days after the CBRP is approved by the Regional Board (Section VI.D.1.c.i(8)).[1522]

6. Lake Elsinore/Canyon Lake permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon Lake (San Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit (Section VI.D.2.c).[1523]
7. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for the nutrients TMDL in the San Jacinto Watershed, no more than 180 days after the CNRP is approved by the Regional Board (Section VI.D.2.d.ii(d)).[1524]
8. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f of the test claim permit (Section VI.D.2.i).[1525]

[1522] Exhibit A, Test Claim, filed January 31, 2011, page 187 (test claim permit, Section VI.D.1.c.i(8)).

[1523] Exhibit A, Test Claim, filed January 31, 2011, page 190 (test claim permit, Section VI.D.2.c; Section VI.D.2.i also requires the permittees to revise the LIP as necessary to implement the interim WQBEL compliance plans pursuant to Sections VI.D.2.a and b).

[1524] Exhibit A, Test Claim, filed January 31, 2011, page 191 (test claim permit, Section VI.D.2.d.ii(d)).

[1525] Exhibit A, Test Claim, filed January 31, 2011, page 192 (test claim permit, Section VI.D.2.i).

9. The LIPs must be designed to achieve compliance with receiving water limitations associated with discharges of urban runoff to the MEP (Section VII.B).[1526]
10. Within 30 days following approval by the executive officer of the report described in Section VII.D.1 of the test claim permit, the permittees shall revise the applicable LIPs to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required (Section VII.D.2).[1527]
11. The permittees shall incorporate their enforcement programs into the LIPs (Section VIII.A).[1528]
12. The permittees shall update the LIPs following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit (Section VIII.H).[1529]
13. The permittees shall describe their procedures and authorities for managing illegal dumping in the LIPs (Section IX.C).[1530]
14. The permittees shall update the LIPs following their review of and revisions to their IC/ID programs to include a proactive IDDE program, as set forth in Section IX.D of the test claim permit (Section IX.D).[1531]
15. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose (Section XII.A.1).[1532]

[1526] Exhibit A, Test Claim, filed January 31, 2011, page 193 (test claim permit, Section VII.B).

[1527] Exhibit A, Test Claim, filed January 31, 2011, page 194 (test claim permit, Section VII.D.2).

[1528] Exhibit A, Test Claim, filed January 31, 2011, page 195 (test claim permit, Section VIII.A).

[1529] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section VIII.H).

[1530] Exhibit A, Test Claim, filed January 31, 2011, page 198 (test claim permit, Section IX.C).

[1531] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[1532] Exhibit A, Test Claim, filed January 31, 2011, page 208 (test claim permit, Section XII.A.1).

16. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:
    a. The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.
    b. A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.
    c. Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.
    d. Training for those involved with WQMP reviews in accordance with Section XV of the test claim permit (Training Requirements) (Section XII.H).[1533]
17. Each permittee shall include in its LIP the inspection and cleaning frequency for all portions of its MS4 (Section XIV.D).[1534]
18. Within 24 months of adoption of the test claim permit, each permittee shall update their LIP to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit (Section XV.A).[1535]

B. Proactive Illicit Discharge Detection and Elimination Program

1. Within 18 months of adoption of this test claim permit, review and revise the IC/ID program to include a proactive illicit discharge detection and elimination program, using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program, consistent with Section IX.E of the test claim permit (Section IX.D).[1536]
2. Report the result of the review required by Section IX.D of the test claim permit in the annual report and include a description of the permittees' revised proactive illicit discharge detection and elimination program, procedures and schedules (Section IX.D).[1537]

[1533] Exhibit A, Test Claim, filed January 31, 2011, page 224 (test claim permit, Section XII.H).

[1534] Exhibit A, Test Claim, filed January 31, 2011, page 229 (test claim permit, Section XIV.D).

[1535] Exhibit A, Test Claim, filed January 31, 2011, pages 231-232 (test claim permit, Section XV.A).

[1536] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

[1537] Exhibit A, Test Claim, filed January 31, 2011, pages 198-199 (test claim permit, Section IX.D).

3. *Except* for those responses that result in an enforcement action, maintain a database summarizing IC/ID incident response, including IC/IDs detected as part of field monitoring activities (Section IX.H).[1538]

4. Review and update the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program (Appendix 3, Section III.E).[1539]

5. Establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring location using dry weather monitoring for nitrogen and total dissolved solids (Appendix 3, Section III.E).[1540] *Monitoring for total dissolved solids and total inorganic nitrogen is not a new requirement and is not eligible for reimbursement*

C. Septic System Database

1. The County of Riverside shall maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008 (Section X.D).[1541]

D. Watershed Action Plan

1. Within three years of adoption of the test claim permit, the permittees shall develop and submit to the Executive Officer for approval a Watershed Action Plan and implementation tools that describes and implements the permittees' approach to coordinated watershed management (Sections XII.B.1, 2, and 3).[1542] At a minimum, the Watershed Action Plan shall include the following:

   a. Description of proposed regional BMP approaches that will be used to address urban TMDL WLAs.

   b. Development of recommendations for specific retrofit studies of MS4, parks and recreational areas that incorporate opportunities for addressing TMDL implementation plans, hydromodification from urban runoff and LID implementation.

   c. Description of regional efforts that benefit water quality (e.g. Western Riverside County Multiple Species Habitat Conservation Plan, TMDL Task

---

[1538] Exhibit A, Test Claim, filed January 31, 2011, page 199 (test claim permit, Section IX.H).

[1539] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[1540] Exhibit A, Test Claim, filed January 31, 2011, page 253 (test claim permit, Appendix 3 [Monitoring and Reporting Program], Section III.E).

[1541] Exhibit A, Test Claim, filed January 31, 2011, page 200 (test claim permit, Section X.D).

[1542] Exhibit A, Test Claim, filed January 31, 2011, pages 209-210 (Sections XII.B.1, 2, and 3).

Forces, Water Conservation Task Forces, Integrated Regional Watershed Management Plans) and their role in the Watershed Action Plan. The permittees shall describe how these efforts link to their urban runoff programs and identify any further coordination that should be promoted to address urban WLA or hydromodification from urban runoff to the MEP (Section XII.B.3).[1543]

2. Within two years of adoption of the test claim permit, the permittees shall delineate existing unarmored or soft-armored stream channels in the permit area that are vulnerable to hydromodification from new development and significant redevelopment projects (Section XII.B.4).[1544]
3. Within two years of completion of the channel delineation in Section XII.B.4 of the test claim permit, develop a Hydromodification Management Plan (HMP) describing how the delineation will be used on a per project, sub-watershed, and watershed basis to manage Hydromodification caused by urban runoff. The HMP shall prioritize actions based on drainage feature/susceptibility/risk assessments and opportunities for restoration.
    a. The HMP shall identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis.
    b. Develop and implement a HMP to evaluate Hydromodification impacts for the drainage channels deemed most susceptible to degradation. The HMP will identify sites to be monitored, include an assessment methodology, and required follow-up actions based on monitoring results. Where applicable, monitoring sites may be used to evaluate the effectiveness of BMPs in preventing or reducing impacts from Hydromodification (Section XII.B.5).[1545]
4. Identify impaired waters [CWA § 303(d) listed] with identified urban runoff pollutant sources causing impairment, existing monitoring programs addressing those pollutants, any BMPs that the permittees are currently implementing, and any BMPs the permittees are proposing to implement consistent with the other requirements of this Order. Upon completion of the channel delineation, develop a schedule to implement an integrated, world-wide-web available, regional geodatabase of the impaired waters, MS4 facilities, critical habitat preserves defined in the Multiple Species Habitat Conservation Plan and stream channels in the permit area that are vulnerable to hydromodification from urban runoff (Section XII.B.6).[1546]

[1543] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.3).

[1544] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.4).

[1545] Exhibit A, Test Claim, filed January 31, 2011, page 210 (Section XII.B.5).

[1546] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.6).

5. Develop a schedule to maintain the watershed geodatabase and other available and relevant regulatory and technical documents associated with the Watershed Action Plan (Section XII.B.7).[1547]
6. Within three years of adoption of the test claim permit, the permittees shall submit the Watershed Action Plan to the Executive Officer for approval and incorporation into the Drainage Area Management Plan (DAMP). Within six months of approval, each permittee shall implement applicable provisions of the approved revised DAMP and incorporate applicable provisions of the revised DAMP into the LIPs for watershed wide coordination of the Watershed Action Plan (Section XII.B.8).[1548]
7. The permittees shall also incorporate Watershed Action Plan training, as appropriate, including training for upper-level managers and directors into the training programs described in Section XV of the test claim permit. The co-permittees shall also provide outreach and education to the development community regarding the availability and function of appropriate web-enabled components of the Watershed Action Plan (Section XII.B.9).[1549]
8. Invite participation and comments from resource conservation districts, water and utility agencies, state and federal agencies, non-governmental agencies and other interested parties in the development and use of the watershed geodatabase (Section XII.B.10).[1550]

E. Employee Training

1. Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to project specific WQMP review on the following:
    a. Review and approval of project-specific WQMPs
    b. Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality
    c. Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP
    d. Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit (Section XV.C).[1551]

[1547] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.7).

[1548] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.8).

[1549] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.9).

[1550] Exhibit A, Test Claim, filed January 31, 2011, page 211 (Section XII.B.10).

[1551] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

2. Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for implementing the requirements of the test claim order related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers); define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Section XV.C).[1552]
3. New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Section XV.F.1).[1553]
4. Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive formal training at least once during the term of the test claim permit (Section XV.F.4).[1554]
5. Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit relating to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Section XV.F.5).[1555]

F. Urban Runoff Management Program Effectiveness Assessment

1. Develop and include in the first annual report (November 2010) after the adoption of the test claim permit a proposal for assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance. The assessment measures are required to target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B (Section XVII.A.3).[1556]

[1552] Exhibit A, Test Claim, filed January 31, 2011, page 232 (test claim permit, Section XV.C).

[1553] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.1).

[1554] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.4).

[1555] Exhibit A, Test Claim, filed January 31, 2011, page 233 (test claim permit, Section XV.F.5).

[1556] Exhibit A, Test Claim, filed January 31, 2011, page 235 (test claim permit, Section XVII.A.3).

Reimbursement for these activities is denied beginning January 1, 2018, because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d) and, thus, there are no costs mandated by the state.

In addition, reimbursement for these mandated activities from any source, including but not limited to, state and federal funds, any service charge, fees, or assessments to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes, shall be identified and deducted from any claim submitted for reimbursement.

This Test Claim is denied for the Riverside County Flood Control and Water Conservation District because there is no evidence that the District incurred costs mandated by the state from its proceeds of taxes.

All other activities and sections of the test claim permit and costs pled by the claimants are denied.

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 26, 2024, I served the:

- **Current Mailing List dated March 6, 2024**
- **Decision adopted March 22, 2024**

  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VII.D.3; VIII.A; VIII.C; VIII.H; IX.C; IX.D; IX.E; IX.H; X.D; XI.D.1; XI.D.6; XI.D.7; XI.E.6; XII.A.1; XII.A.5; XII.B; XII.C.1; XII.D.1; XII.E.1; XII.E.2; XII.E.3; XII.E.4; XII.E.6; XII.E.7; XII.E.8; XII.E.9; XII.F.1; XII.F.2; XII.G.1; XII.H; XII.K.4; XII.K.5; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3,[1] Adopted January 29, 2010
  County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, 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 March 26, 2024, at Sacramento, California.

Jill Magee
_____

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

[1] Government Code section 17553(b)(1) requires test claims to identify the specific sections of the executive order alleged to contain a mandate and a detailed description of the new activities mandated by the state. Only the sections indicated in this caption have been properly pled.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/6/24

Claim Number: 10-TC-07

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033

Claimants: City of Beaumont
City of Corona
City of Hemet
City of Lake Elsinore
City of Moreno Valley
City of Perris
City of San Jacinto
County of Riverside
Riverside County Flood Control and Water Conservation 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.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Raul Arevalo, Operations Analyst, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 739-4915
Raul.Arevalo@ci.corona.ca.us

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Richard Belmudez, City Manager, *City of Perris*
Claimant Contact
101 N. D Street, Perris, CA 92570
Phone: (951) 943-6100
rbelmudez@cityofperris.org

Ben Benoit, Auditor-Controller, *County of Riverside*
Claimant Contact
4080 Lemon Street, 11th Floor, Riverside, CA 92502
Phone: (951) 955-3800
bbenoit@rivco.org

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzafopoulos@cityofsthelena.org

Katharine Bramble, Attorney, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 440-7769
Katharine.Bramble@waterboards.ca.gov

Wendell Bugtai, Assistant City Manager, *City of Perris*
101 North D Street, Perris, CA 92570
Phone: (951) 943-6100
wbugtai@cityofperris.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

David Burhenn, *Burhenn & Gest, LLP*
Claimant Representative
12401 Wilshire Blvd, Suite 200, Los Angeles, CA 90025
Phone: (213) 629-8788
dburhenn@burhenngest.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Sheri Chapman, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8267
schapman@calcities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Margaret Demauro, Finance Director, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
mdemauro@applevalley.org

Jacob Ellis, City Manager, *City of Corona*
Claimant Contact
400 South Vicentia Avenue, Corona, CA 92882
Phone: (951) 279-3670
Jacob.Ellis@coronaca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Jennifer Fordyce, Assistant Chief Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, 22nd floor, Sacramento, CA 95814
Phone: (916) 324-6682
Jennifer.Fordyce@waterboards.ca.gov

Craig Foster, Chief Operating Officer, *Building Industry Legal Defense Foundation*
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, Irvin 92614
Phone: (949) 553-9500
cfoster@biasc.org

Rod Foster, City Administrator, *City of Rialto*
150 South Palm Avenue, Rialto, CA 92376
Phone: (909) 421-7246
rfoster@rialtoca.gov

Elizabeth Gibbs, City Manager, *City of Beaumont*
Claimant Contact
550 E. 6th Street, Beaumont, CA 92223
Phone: (951) 769-8520
egibbs@beaumontca.gov

Juliana Gmur, Acting Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Mike Gomez, Revenue Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3240
mgomez@newportbeachca.gov

Adam Gufarotti, Community Support Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
agufarotti@lake-elsinore.org

Catherine George Hagan, Senior Staff Counsel, *State Water Resources Control Board*
c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Acting Chief Financial Officer, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5630
Sunny.Han@surfcity-hb.org

Aaron Harp, *City of Newport Beach*
Office of the City Attorney, 100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3131
aharp@newportbeachca.gov

Jeff Hart, Public Works Director, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
jhart@beaumontca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Katie Hockett, Operations Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3601
Katie.Hockett@ci.corona.ca.us

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Rob Johnson, City Manager, *City of San Jacinto*
Claimant Contact
595 S. San Jacinto Ave., Bldg. A, San Jacinto, CA 92583
Phone: (951) 487-7330
rjohnson@sanjacintoca.gov

George Johnson, Chief Executive Officer, *County of Riverside*
4080 Lemon Street, 4th Floor, Riverside, CA 92501
Phone: (951) 955-1100
gajohnson@rivco.org

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Jayne Joy, Executive Officer, *Santa Ana Regional Water Quality Control Board*
3737 Main Street, Suite 500, Riverside, CA 92501-3348
Phone: (951) 782-3284
Jayne.Joy@waterboards.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
michael.lauffer@waterboards.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Mike Lee, City Manager, *City of Moreno Valley*
Claimant Contact
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: (951) 413-3020
mikel@moval.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706
DMar@sco.ca.gov

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Tom Moody, Assistant General Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3660
Tom.Moody@ci.corona.ca.us

Jill Moya, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3887
jmoya@oceansideca.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Kaleb Neufeld, Assistant Controller, *City of Fresno*
2600 Fresno Street, Fresno, CA 93721
Phone: (559) 621-2489
Kaleb.Neufeld@fresno.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Carlos Norvani, NPDES Coordinator, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
cnorvani@lake-elsinore.org

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
Los Angeles Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 322-3313
Adriana.Nunez@waterboards.ca.gov

Eric Oppenheimer, Executive Director, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5615
eric.oppenheimer@waterboards.ca.gov

Mathew Osborn, Water Utilities Superintendent, *City of San Jacinto*
270 Bissell Place, San Jacinto, CA 92583
Phone: (951) 654-4041
mosborn@sanjacintoca.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jeff Potts, Environmental Compliance Coordinator, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 736-2442
Jeff.Potts@ci.corona.ca.us

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Mark Prestwich, City Manager, *City of Hemet*
Claimant Contact
445 East Florida Avenue, Hemet, CA 92543
Phone: (951) 765-2301
mprestwich@hemetca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Noah Rau, Public Works Director, *City of Hemet*
3777 Industrial Avenue, Corporation Yard, Hemet, CA 92545
Phone: (951) 765-3712
nrau@hemetca.gov

David Rice, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 341-5161
david.rice@waterboards.ca.gov

Teresita Sablan, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board and San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5174
Teresita.Sablan@waterboards.ca.gov

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Michaela Schunk, Legislative Coordinator, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
mschunk@counties.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Jason Simpson, City Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
jsimpson@lake-elsinore.org

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Jason Uhley, General Manager - Chief Engineer, *Riverside County Flood Control*
Claimant Contact
and Water Conservation District, 1995 Market Street, Riverside, CA 95201
Phone: (951) 955-1201
juhley@rivco.org

Rosalva Ureno, City Traffic Engineer, *City of Corona*
400 S. Vicentia Ave, Corona, CA 92882
Phone: (951) 736-2266
Rosalva.Ureno@coronaca.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Robert Vestal, Assistant Director of Public Works, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
rvestal@beaumontca.gov

Emel Wadhwani, Senior Staff Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814
Phone: (916) 322-3622
emel.wadhwani@waterboards.ca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit B

March 26, 2024

Mr. David Burhenn
Burhenn & Gest, LLP
12401 Wilshire Blvd, Suite 200
Los Angeles, CA 90025

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

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

Re: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3., Adopted January 29, 2010
County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, Claimants

Dear Mr. Burhenn and Ms. Sidarous:

On March 22, 2024, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim on the above-entitled matter.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the reimbursement claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

Draft Expedited Parameters and Guidelines

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be

supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

Review of Draft Expedited Parameters and Guidelines
Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines no later than **5:00 pm on April 16, 2024**. (Cal. Code Regs., tit. 2, §1183.9(b).) Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, §1187.5.) Hearsay evidence 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 an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

Rebuttals
Written rebuttals may be filed within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Draft Proposed Decision and Parameters and Guidelines

If there are no substantive comments filed by the comment deadline, then no Draft Proposed Decision will be prepared or issued for comment and the matter will be set for the next regularly scheduled hearing, pursuant to section 1183.9(d) of the Commission's regulations. If substantive comments are filed, Commission staff will review the Draft Expedited Parameters and Guidelines, comments, and any rebuttals and will prepare a Draft Proposed Decision and Parameters and Guidelines, which will be issued for comment.

Alternative Process: Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Test Claimant and Department of Finance Submission of Letter of Intent
Within 30 days of the Commission's adoption of a decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.11 of the Commission's regulations to develop a j*oint reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs
Pursuant to the plan, the test claimant and the Department of Finance shall submit the

[1] 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.

Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs
Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within 15 days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs
At least 10 days prior to the next hearing, Commission staff shall review comments and rebuttals and issue a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

Alternative Process: Reasonable Reimbursement Methodology Proposed for Inclusion in Parameters and Guidelines

Government Code section 17518.5 provides a process for a reasonable reimbursement methodology to be proposed by the Department of Finance, the State Controller, an affected state agency, the claimant, or an interested party for inclusion in the parameters and guidelines of an amendment to parameters and guidelines. In this context, Government Code section 17518.5 defines "reasonable reimbursement methodology" as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514 which shall:

- Be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- Consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and
- Whenever possible, be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

You are advised that comments filed with the Commission are required to 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.shtml on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice,

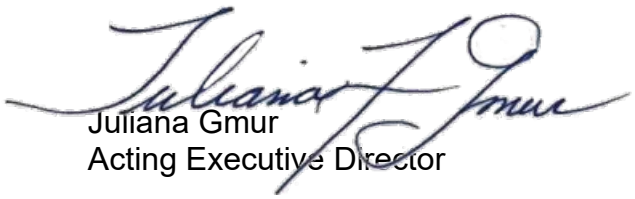
filing may occur by first class mail, overnight delivery or personal service only upon prior approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, May 24, 2024**, at 10:00 a.m., and will be issued on or about May 10, 2024, but may be heard on **Friday, July 26, 2024**, at 10:00 a.m., and will be issued on or about July 12, 2024, if substantive comments are filed by the comment deadline.

Sincerely,



Juliana Gmur
Acting Executive Director

Hearing Date: May 24, 2024[1]
J:\MANDATES\2010\TC\10-TC-07 SARWQCB Order No. R8-2010-0033\Ps&Gs\Draft Expedited Ps&Gs.docx

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3.

Adopted January 29, 2010

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033

10-TC-07

Period of reimbursement from January 29, 2010, through December 31, 2017

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address state-mandated activities arising from National Pollutant Discharge Elimination System Program (NPDES) permit, Order No. R8-2010-0033 (test claim permit), adopted by the Santa Ana Regional Water Quality Control Board on January 29, 2010.

On March 22, 2024, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim permit imposes a reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the activities described below under Section IV., Reimbursable Activities, only.

Any fee revenues received must be identified as offsetting revenue. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, other state funds, and other funds that are not the claimant's proceeds of taxes shall be identified and deducted from this claim.

The Test Claim was denied for the Riverside County Flood Control and Water Conservation District because there was no evidence that the District incurred costs mandated by the state from its proceeds of taxes.

All other activities and sections of the test claim permit and costs pled by the claimants were denied.

[1] Tentative. If substantive comments are received on the Draft Expedited Parameters and Guidelines, a Draft Proposed Decision and Parameters and Guidelines will be prepared and issued for comment and this matter will instead be set for the July 26, 2024 hearing.

II. ELIGIBLE CLAIMANTS

The following permittees are required to comply with Order No. R8-2010-0033 and are eligible to claim reimbursement, provided they are subject to the taxing restrictions of articles XIII A and XIII C of the California Constitution, and the spending limits of article XIII B of the California Constitution, and incur increased costs as a result of this mandate that are paid from their local proceeds of taxes:

The County of Riverside and the cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta[2], Norco, Perris, Riverside, San Jacinto, and Wildomar.[3, 4]

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on January 31, 2011, establishing eligibility for reimbursement for the 2009-2010 fiscal year. However, the test claim permit has a later effective date and therefore, the period of reimbursement for this program begins on the permit's effective date, January 29, 2010. Beginning January 1, 2018, there are no costs mandated by the state because the claimants have fee authority sufficient as a matter of law to cover the costs of these activities pursuant to Government Code section 17556(d). Therefore, for all eligible claimants *except* the cities of Murrieta and Wildomar, increased costs incurred from January 29, 2010 through December 31, 2017 are reimbursable. For the cities of Murrieta and Wildomar, increased costs incurred from January 29, 2010 up to and including June, 6, 2013 only are reimbursable.[5]

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

---

[2] The Test Claim Decision found that the City of Murrieta is an eligible claimant up to and including June 6, 2013. Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 83-84.

[3] The Test Claim Decision found that the City of Murrieta is an eligible claimant up to and including June 6, 2013. Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 83-84.

[4] Exhibit A, Test Claim Decision, adopted March 22, 2024, page 85 (footnote 357).

[5] Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 83-84.

4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. Local Implementation Plans

1. Within six months of adoption of the test claim permit, the permittees shall develop a LIP template and submit for approval of the executive officer. The LIP template shall be amended as the provisions of the DAMP are amended to address the requirements of the test claim permit. The LIP template shall facilitate a description of the co-permittee's individual programs to implement the DAMP, including the organizational units responsible for implementation and identify positions responsible for urban runoff program implementation. The

description shall specifically address the items enumerated in Sections IV.A.1 through IV.A.12 of the test claim permit (Order No. R8-2010-0033, Section IV.A).

2. Within 12 months of approval of the LIP template, and amendments thereof, by the executive officer, each permittee shall complete a LIP, in conformance with the LIP template. The LIP shall be signed by the principal executive officer or ranking elected official or their duly authorized representative pursuant to Section XX.M of the test claim permit (Order No. R8-2010-0033, Section IV.B).
3. Revise the LIP as necessary, following an annual review and evaluation of the effectiveness of the urban runoff programs, in compliance with Section VIII.H of the test claim permit (Order No. R8-2010-0033, Section IV.C).
4. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall amend the LIP to be consistent with the revised DAMP and WQMPs to comply with the interim WQBELs for the Middle Santa Ana River Watershed Bacterial Indicator TMDL within 90 days after said revisions are approved by the Regional Board (Order No. R8-2010-0033, Section VI.D.1.a.vii).
5. Middle Santa Ana River permittees (Riverside County and the Cities of Corona, Norco, and Riverside) shall revise the LIPs consistent with the Comprehensive Bacteria Reduction Plan (CBRP) to comply with the final WQBELs during the dry season for the Middle Santa Ana River Watershed Bacterial Indicator TMDL no more than 180 days after the CBRP is approved by the Regional Board (Order No. R8-2010-0033, Section VI.D.1.c.i(8)).
6. Lake Elsinore/Canyon Lake permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the interim WQBEL compliance plans (Lake Elsinore In-Lake Sediment Nutrient Reduction Plan, Lake Elsinore/Canyon Lake Model Update Plan) to comply with nutrient TMDLs for the Lake Elsinore/Canyon Lake (San Jacinto Watershed) submitted pursuant to Section VI.D.2.a and b of the test claim permit (Order No. R8-2010-0033, Section VI.D.2.c).
7. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont, Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs consistent with the Comprehensive Nutrient Reduction Plan (CNRP), which describes in detail the specific actions that have been taken or will be taken, including the proposed method for evaluating progress, to achieve final compliance with the WQBELs for the nutrients TMDL in the San Jacinto Watershed, no more than 180 days after the CNRP is approved by the Regional Board (Order No. R8-2010-0033, Section VI.D.2.d.ii(d)).
8. Lake Elsinore/Canyon Lake Permittees (Riverside County Flood Control and Water Conservation District, County of Riverside and Cities of Beaumont,

Canyon Lake, Hemet, Lake Elsinore, Menifee, Moreno Valley, Murrieta, Perris, San Jacinto, Riverside, and Wildomar) shall revise the LIPs as necessary to implement the CNRP to comply with the final WQBELs for the nutrients TMDL in the San Jacinto Watershed, including any necessary revisions resulting from updates to the CNRP following a BMP effectiveness analysis as required by Section VI.D.2.f of the test claim permit (Order No. R8-2010-0033, Section VI.D.2.i).

9. The LIPs must be designed to achieve compliance with receiving water limitations associated with discharges of urban runoff to the MEP (Order No. R8-2010-0033, Section VII.B).
10. Within 30 days following approval by the executive officer of the report described in Section VII.D.1 of the test claim permit, the permittees shall revise the applicable LIPs to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required (Order No. R8-2010-0033, Section VII.D.2).
11. The permittees shall incorporate their enforcement programs into the LIPs (Order No. R8-2010-0033, Section VIII.A).
12. The permittees shall update the LIPs following an annual evaluation of the effectiveness of implementation and enforcement response procedures with respect to the items discussed in Sections VIII.A through G of the test claim permit (Order No. R8-2010-0033, Section VIII.H).
13. The permittees shall describe their procedures and authorities for managing illegal dumping in the LIPs (Order No. R8-2010-0033, Section IX.C).
14. The permittees shall update the LIPs following their review of and revisions to their IC/ID programs to include a proactive IDDE program, as set forth in Section IX.D of the test claim permit (Order No. R8-2010-0033, Section IX.D).
15. Each co-permittee shall specify in its LIP its procedure for verifying that any map or permit for a new development or significant redevelopment project for which discretionary approval is sought has obtained coverage under the General Construction Permit, where applicable, and any tools utilized for this purpose (Order No. R8-2010-0033, Section XII.A.1).
16. Within 18 months of adoption of the test claim permit, each permittee shall include in its LIP standard procedures and tools pertaining to the following:
    a. The process for review and approval of WQMPs, including a checklist that incorporates the minimum requirements of the model WQMP.
    b. A database to track structural post-construction BMPs, consistent with Section XII.K.4 of the test claim permit.
    c. Ensuring that the entity or entities responsible for BMP maintenance and the mechanism for BMP funding are identified prior to WQMP approval.

d. Training for those involved with WQMP reviews in accordance with Section XV of the test claim permit (Training Requirements) (Order No. R8-2010-0033, Section XII.H).

17. Each permittee shall include in its LIP the inspection and cleaning frequency for all portions of its MS4 (Order No. R8-2010-0033, Section XIV.D).

18. Within 24 months of adoption of the test claim permit, each permittee shall update their LIP to include a program to provide formal and where necessary, informal training to permittee staff that implement the provisions of the test claim permit (Order No. R8-2010-0033, Section XV.A).

B. Proactive Illicit Discharge Detection and Elimination Program

1. Within 18 months of adoption of this test claim permit, review and revise the IC/ID program to include a proactive illicit discharge detection and elimination program, using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program, consistent with Section IX.E of the test claim permit (Order No. R8-2010-0033, Section IX.D).

2. Report the result of the review required by Section IX.D of the test claim permit in the annual report and include a description of the permittees' revised proactive illicit discharge detection and elimination program, procedures and schedules (Order No. R8-2010-0033, Section IX.D).

3. *Except* for those responses that result in an enforcement action, maintain a database summarizing IC/ID incident response, including IC/IDs detected as part of field monitoring activities (Order No. R8-2010-0033, Section IX.H).

4. Review and update the dry weather and wet weather reconnaissance strategies to identify and eliminate IC/IDs using the Guidance Manual for Illicit Discharge Detection and Elimination by the Center for Watershed Protection or any other equivalent program (Order No. R8-2010-0033, Appendix 3, Section III.E).

5. Establish a baseline dry weather flow concentration for total dissolved solids and total inorganic nitrogen at each core monitoring location using dry weather monitoring for nitrogen and total dissolved solids (Order No. R8-2010-0033, Appendix 3, Section III.E). *Monitoring for total dissolved solids and total inorganic nitrogen is not a new requirement and is not eligible for reimbursement.*

C. Septic System Database

1. The County of Riverside shall maintain updates to a database of new septic systems in the permittees' jurisdictions approved since 2008 (Order No. R8-2010-0033, Section X.D).

D. Watershed Action Plan

1. Within three years of adoption of the test claim permit, the permittees shall develop and submit to the Executive Officer for approval a Watershed Action

Plan and implementation tools that describes and implements the permittees' approach to coordinated watershed management (Order No. R8-2010-0033, Sections XII.B.1, 2, and 3). At a minimum, the Watershed Action Plan shall include the following:

a. Description of proposed regional BMP approaches that will be used to address urban TMDL WLAs.

b. Development of recommendations for specific retrofit studies of MS4, parks and recreational areas that incorporate opportunities for addressing TMDL implementation plans, hydromodification from urban runoff and LID implementation.

c. Description of regional efforts that benefit water quality (e.g. Western Riverside County Multiple Species Habitat Conservation Plan, TMDL Task Forces, Water Conservation Task Forces, Integrated Regional Watershed Management Plans) and their role in the Watershed Action Plan. The permittees shall describe how these efforts link to their urban runoff programs and identify any further coordination that should be promoted to address urban WLA or hydromodification from urban runoff to the MEP (Section XII.B.3).

2. Within two years of adoption of the test claim permit, the permittees shall delineate existing unarmored or soft-armored stream channels in the permit area that are vulnerable to hydromodification from new development and significant redevelopment projects (Order No. R8-2010-0033, Section XII.B.4).

3. Within two years of completion of the channel delineation in Section XII.B.4 of the test claim permit, develop a Hydromodification Management Plan (HMP) describing how the delineation will be used on a per project, sub-watershed, and watershed basis to manage Hydromodification caused by urban runoff. The HMP shall prioritize actions based on drainage feature/susceptibility/risk assessments and opportunities for restoration.

   a. The HMP shall identify potential causes of identified stream degradation including a consideration of sediment yield and balance on a watershed or subwatershed basis.

   b. Develop and implement a HMP to evaluate Hydromodification impacts for the drainage channels deemed most susceptible to degradation. The HMP will identify sites to be monitored, include an assessment methodology, and required follow-up actions based on monitoring results. Where applicable, monitoring sites may be used to evaluate the effectiveness of BMPs in preventing or reducing impacts from Hydromodification (Order No. R8-2010-0033, Section XII.B.5).

4. Identify impaired waters [CWA § 303(d) listed] with identified urban runoff pollutant sources causing impairment, existing monitoring programs addressing those pollutants, any BMPs that the permittees are currently implementing, and any BMPs the permittees are proposing to implement consistent with the other

requirements of this Order. Upon completion of the channel delineation, develop a schedule to implement an integrated, world-wide-web available, regional geodatabase of the impaired waters, MS4 facilities, critical habitat preserves defined in the Multiple Species Habitat Conservation Plan and stream channels in the permit area that are vulnerable to hydromodification from urban runoff (Order No. R8-2010-0033, Section XII.B.6).

5. Develop a schedule to maintain the watershed geodatabase and other available and relevant regulatory and technical documents associated with the Watershed Action Plan (Order No. R8-2010-0033, Section XII.B.7).
6. Within three years of adoption of the test claim permit, the permittees shall submit the Watershed Action Plan to the Executive Officer for approval and incorporation into the Drainage Area Management Plan (DAMP). Within six months of approval, each permittee shall implement applicable provisions of the approved revised DAMP and incorporate applicable provisions of the revised DAMP into the LIPs for watershed wide coordination of the Watershed Action Plan (Order No. R8-2010-0033, Section XII.B.8).
7. The permittees shall also incorporate Watershed Action Plan training, as appropriate, including training for upper-level managers and directors into the training programs described in Section XV of the test claim permit. The co-permittees shall also provide outreach and education to the development community regarding the availability and function of appropriate web-enabled components of the Watershed Action Plan (Order No. R8-2010-0033, Section XII.B.9).
8. Invite participation and comments from resource conservation districts, water and utility agencies, state and federal agencies, non-governmental agencies and other interested parties in the development and use of the watershed geodatabase (Order No. R8-2010-0033, Section XII.B.10).

E. Employee Training

1. Provide formal training to permittee employees responsible for implementing the requirements of the test claim order related to project specific WQMP review on the following:
    a. Review and approval of project-specific WQMPs
    b. Potential effects that permittee or public activities related to the employee trainee's duties can have on water quality
    c. Principal applicable water quality laws and regulations that are the basis for the requirements in the DAMP
    d. Provisions of the DAMP that relate to the duties of the employee trainee, including an overview of the CEQA requirements contained in Section XII.C of the test claim permit (Order No. R8-2010-0033, Section XV.C).
2. Formal training (training conducted in classrooms or using videos, DVDs or other multimedia) shall: consider all applicable permittee staff responsible for

implementing the requirements of the test claim order related to project-specific WQMP review (including but not limited to planners, plan reviewers, and engineers); define the required knowledge and competencies for each permittee activity; outline the curriculum; include testing or other procedures to determine that the trainees have acquired the requisite knowledge to carry out their duties, and provide proof of completion of training such as certificate of completion, and/or attendance sheets (Order No. R8-2010-0033, Section XV.C).

3. New Permittee employees responsible for implementing requirements of the test claim permit relating to project-specific WQMP review must receive formal training within one year of hire (Order No. R8-2010-0033, Section XV.F.1).
4. Existing permittee employees responsible for implementing the requirements of test claim permit relating to project-specific WQMP review must receive formal training at least once during the term of the test claim permit (Order No. R8-2010-0033, Section XV.F.4).
5. Include the start date for formal training of permittee employees responsible for implementing the requirements of the test claim permit relating to project-specific WQMP review in the schedule of DAMP revisions required in Section III.A.1.s of the test claim permit, which shall be no later than six months after Executive Officer approval of DAMP updates applicable to the permittee activities described in Section XIV of the test claim permit (Order No. R8-2010-0033, Section XV.F.5).

F. Urban Runoff Management Program Effectiveness Assessment

1. Develop and include in the first annual report (November 2010) after the adoption of the test claim permit a proposal for assessment of urban runoff management program effectiveness on an area-wide and jurisdiction-specific basis at the six outcome levels, utilizing the California Storm Water Quality Association (CASQA) Municipal Storm Water Program Effectiveness Assessment Guidance. The assessment measures are required to target both water quality outcomes and the results of municipal enforcement activities, consistent with the requirements of Appendix 3, Section IV.B (Order No. R8-2010-0033, Section XVII.A.3).

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits

divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central

government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter[6] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no

[6] This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for

the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 26, 2024, I served the:

- **Current Mailing List dated March 6, 2024**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued March 26, 2024**

  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3., Adopted January 29, 2010
  County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, 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 March 26, 2024, at Sacramento, California.

Jill Magee
_____

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/6/24

Claim Number: 10-TC-07

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033

Claimants: City of Beaumont
City of Corona
City of Hemet
City of Lake Elsinore
City of Moreno Valley
City of Perris
City of San Jacinto
County of Riverside
Riverside County Flood Control and Water Conservation 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.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Raul Arevalo, Operations Analyst, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 739-4915
Raul.Arevalo@ci.corona.ca.us

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Richard Belmudez, City Manager, *City of Perris*
Claimant Contact
101 N. D Street, Perris, CA 92570
Phone: (951) 943-6100
rbelmudez@cityofperris.org

Ben Benoit, Auditor-Controller, *County of Riverside*
Claimant Contact
4080 Lemon Street, 11th Floor, Riverside, CA 92502
Phone: (951) 955-3800
bbenoit@rivco.org

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2742
ctzafopoulos@cityofsthelena.org

Katharine Bramble, Attorney, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 440-7769
Katharine.Bramble@waterboards.ca.gov

Wendell Bugtai, Assistant City Manager, *City of Perris*
101 North D Street, Perris, CA 92570
Phone: (951) 943-6100
wbugtai@cityofperris.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

David Burhenn, *Burhenn & Gest, LLP*
Claimant Representative
12401 Wilshire Blvd, Suite 200, Los Angeles, CA 90025
Phone: (213) 629-8788
dburhenn@burhenngest.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Sheri Chapman, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8267
schapman@calcities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Margaret Demauro, Finance Director, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
mdemauro@applevalley.org

Jacob Ellis, City Manager, *City of Corona*
Claimant Contact
400 South Vicentia Avenue, Corona, CA 92882
Phone: (951) 279-3670
Jacob.Ellis@coronaca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Jennifer Fordyce, Assistant Chief Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, 22nd floor, Sacramento, CA 95814
Phone: (916) 324-6682
Jennifer.Fordyce@waterboards.ca.gov

Craig Foster, Chief Operating Officer, *Building Industry Legal Defense Foundation*
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, Irvin 92614
Phone: (949) 553-9500
cfoster@biasc.org

Rod Foster, City Administrator, *City of Rialto*
150 South Palm Avenue, Rialto, CA 92376
Phone: (909) 421-7246
rfoster@rialtoca.gov

Elizabeth Gibbs, City Manager, *City of Beaumont*
Claimant Contact
550 E. 6th Street, Beaumont, CA 92223
Phone: (951) 769-8520
egibbs@beaumontca.gov

Juliana Gmur, Acting Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Mike Gomez, Revenue Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3240
mgomez@newportbeachca.gov

Adam Gufarotti, Community Support Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
agufarotti@lake-elsinore.org

Catherine George Hagan, Senior Staff Counsel, *State Water Resources Control Board*
c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Acting Chief Financial Officer, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5630
Sunny.Han@surfcity-hb.org

Aaron Harp, *City of Newport Beach*
Office of the City Attorney, 100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3131
aharp@newportbeachca.gov

Jeff Hart, Public Works Director, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
jhart@beaumontca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Katie Hockett, Operations Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3601
Katie.Hockett@ci.corona.ca.us

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Rob Johnson, City Manager, *City of San Jacinto*
Claimant Contact
595 S. San Jacinto Ave., Bldg. A, San Jacinto, CA 92583
Phone: (951) 487-7330
rjohnson@sanjacintoca.gov

George Johnson, Chief Executive Officer, *County of Riverside*
4080 Lemon Street, 4th Floor, Riverside, CA 92501
Phone: (951) 955-1100
gajohnson@rivco.org

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Jayne Joy, Executive Officer, *Santa Ana Regional Water Quality Control Board*
3737 Main Street, Suite 500, Riverside, CA 92501-3348
Phone: (951) 782-3284
Jayne.Joy@waterboards.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
michael.lauffer@waterboards.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Mike Lee, City Manager, *City of Moreno Valley*
Claimant Contact
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: (951) 413-3020
mikel@moval.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706
DMar@sco.ca.gov

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Tom Moody, Assistant General Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3660
Tom.Moody@ci.corona.ca.us

Jill Moya, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3887
jmoya@oceansideca.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Kaleb Neufeld, Assistant Controller, *City of Fresno*
2600 Fresno Street, Fresno, CA 93721
Phone: (559) 621-2489
Kaleb.Neufeld@fresno.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Carlos Norvani, NPDES Coordinator, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
cnorvani@lake-elsinore.org

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
Los Angeles Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 322-3313
Adriana.Nunez@waterboards.ca.gov

Eric Oppenheimer, Executive Director, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5615
eric.oppenheimer@waterboards.ca.gov

Mathew Osborn, Water Utilities Superintendent, *City of San Jacinto*
270 Bissell Place, San Jacinto, CA 92583
Phone: (951) 654-4041
mosborn@sanjacintoca.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jeff Potts, Environmental Compliance Coordinator, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 736-2442
Jeff.Potts@ci.corona.ca.us

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Mark Prestwich, City Manager, *City of Hemet*
Claimant Contact
445 East Florida Avenue, Hemet, CA 92543
Phone: (951) 765-2301
mprestwich@hemetca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Noah Rau, Public Works Director, *City of Hemet*
3777 Industrial Avenue, Corporation Yard, Hemet, CA 92545
Phone: (951) 765-3712
nrau@hemetca.gov

David Rice, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814

Phone: (916) 341-5161
david.rice@waterboards.ca.gov

Teresita Sablan, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board and San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5174
Teresita.Sablan@waterboards.ca.gov

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Michaela Schunk, Legislative Coordinator, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
mschunk@counties.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Jason Simpson, City Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
jsimpson@lake-elsinore.org

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Jason Uhley, General Manager - Chief Engineer, *Riverside County Flood Control*
Claimant Contact
and Water Conservation District, 1995 Market Street, Riverside, CA 95201
Phone: (951) 955-1201
juhley@rivco.org

Rosalva Ureno, City Traffic Engineer, *City of Corona*
400 S. Vicentia Ave, Corona, CA 92882
Phone: (951) 736-2266
Rosalva.Ureno@coronaca.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Robert Vestal, Assistant Director of Public Works, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
rvestal@beaumontca.gov

Emel Wadhwani, Senior Staff Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814
Phone: (916) 322-3622
emel.wadhwani@waterboards.ca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

RECEIVED
April 16, 2024
Commission on
State Mandates

Exhibit C

MALIA M. COHEN
CALIFORNIA STATE CONTROLLER

April 16, 2024

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

SUBJECT: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date

California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07 Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3., Adopted January 29, 2010
County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, Claimants

Dear Heather Halsey:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, and recommend no changes.

If you have any questions, please contact Lucas Leung, Local Reimbursements Section, Local Government Programs and Services Division, by email at lleung@sco.ca.gov, or by telephone at (916) 720-3009.

Sincerely,

Darryl Mar

Darryl Mar
Manager, Local Reimbursements Section

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 16, 2024, I served the:

- **Current Mailing List dated April 11, 2024**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**

  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, 10-TC-07
  California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033, Sections IV; VI.D.1.a.vii; VI.D.1.c.i(8); VI.D.2.c; VI.D.2.d.ii(d); VI.D.2.i; VII.B; VII.D.2; VIII.A; VIII.H; IX.C; IX.D; IX.H; X.D; XII.A.1; XII.B; XII.H; XIV.D; XV.A; XV.C; XV.F.1; XV.F.4; XV.F.5; XVII.A.3; and Appendix 3, Section III.E.3., Adopted January 29, 2010
  County of Riverside, Riverside County Flood Control & Water Conservation District, and Cities of Beaumont, Corona; Hemet, Lake Elsinore, Moreno Valley, Perris, and San Jacinto, 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 April 16, 2024, at Sacramento, California.

David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/11/24

Claim Number: 10-TC-07

Matter: California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-0033

Claimants: City of Beaumont
City of Corona
City of Hemet
City of Lake Elsinore
City of Moreno Valley
City of Perris
City of San Jacinto
County of Riverside
Riverside County Flood Control and Water Conservation 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.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Raul Arevalo, Operations Analyst, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 739-4915
Raul.Arevalo@ci.corona.ca.us

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Richard Belmudez, City Manager, *City of Perris*
Claimant Contact
101 N. D Street, Perris, CA 92570
Phone: (951) 943-6100
rbelmudez@cityofperris.org

Ben Benoit, Auditor-Controller, *County of Riverside*
Claimant Contact
4080 Lemon Street, 11th Floor, Riverside, CA 92502
Phone: (951) 955-3800
bbenoit@rivco.org

Cindy Black, City Clerk, *City of St. Helena*
1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742
ctzafopoulos@cityofsthelena.org

Jonathan Borrego, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3065
citymanager@oceansideca.org

Katharine Bramble, Attorney, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 440-7769
Katharine.Bramble@waterboards.ca.gov

Wendell Bugtai, Assistant City Manager, *City of Perris*
101 North D Street, Perris, CA 92570
Phone: (951) 943-6100
wbugtai@cityofperris.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Shelby Burguan, Budget Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3085
sburguan@newportbeachca.gov

David Burhenn, *Burhenn & Gest, LLP*
Claimant Representative
12401 Wilshire Blvd, Suite 200, Los Angeles, CA 90025
Phone: (213) 629-8788
dburhenn@burhenngest.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,

3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Sheri Chapman, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8267
schapman@calcities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Margaret Demauro, Finance Director, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
mdemauro@applevalley.org

Jacob Ellis, City Manager, *City of Corona*
Claimant Contact
400 South Vicentia Avenue, Corona, CA 92882
Phone: (951) 279-3670
Jacob.Ellis@coronaca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Jennifer Fordyce, Assistant Chief Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, 22nd floor, Sacramento, CA 95814
Phone: (916) 324-6682
Jennifer.Fordyce@waterboards.ca.gov

Craig Foster, Chief Operating Officer, *Building Industry Legal Defense Foundation*
Building Association of Southern California, 17744 Sky Park Circle, Suite 170, Irvine, Irvin 92614
Phone: (949) 553-9500
cfoster@biasc.org

Rod Foster, City Administrator, *City of Rialto*
150 South Palm Avenue, Rialto, CA 92376
Phone: (909) 421-7246
rfoster@rialtoca.gov

Elizabeth Gibbs, City Manager, *City of Beaumont*
Claimant Contact
550 E. 6th Street, Beaumont, CA 92223
Phone: (951) 769-8520
egibbs@beaumontca.gov

Juliana Gmur, Acting Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Adam Gufarotti, Community Support Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
agufarotti@lake-elsinore.org

Catherine George Hagan, Senior Staff Counsel, *State Water Resources Control Board*

c/o San Diego Regional Water Quality Control Board, 2375 Northside Drive, Suite 100, San Diego, CA 92108
Phone: (619) 521-3012
catherine.hagan@waterboards.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Chief Financial Officer, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5630
Sunny.Han@surfcity-hb.org

Aaron Harp, *City of Newport Beach*
Office of the City Attorney, 100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3131
aharp@newportbeachca.gov

Jeff Hart, Public Works Director, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
jhart@beaumontca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Katie Hockett, Operations Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3601
Katie.Hockett@ci.corona.ca.us

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Rob Johnson, City Manager, *City of San Jacinto*
Claimant Contact
595 S. San Jacinto Ave., Bldg. A, San Jacinto, CA 92583
Phone: (951) 487-7330
rjohnson@sanjacintoca.gov

George Johnson, Chief Executive Officer, *County of Riverside*
4080 Lemon Street, 4th Floor, Riverside, CA 92501
Phone: (951) 955-1100
gajohnson@rivco.org

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Jayne Joy, Executive Officer, *Santa Ana Regional Water Quality Control Board*
3737 Main Street, Suite 500, Riverside, CA 92501-3348
Phone: (951) 782-3284
Jayne.Joy@waterboards.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Michael Lauffer, Chief Counsel, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5183
michael.lauffer@waterboards.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101,

Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Mike Lee, City Manager, *City of Moreno Valley*
Claimant Contact
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: (951) 413-3020
mikel@moval.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Elizabeth McGinnis, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Elizabeth.McGinnis@csm.ca.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Tom Moody, Assistant General Manager, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 279-3660
Tom.Moody@ci.corona.ca.us

Jill Moya, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3887
jmoya@oceansideca.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Kaleb Neufeld, Assistant Controller, *City of Fresno*
2600 Fresno Street, Fresno, CA 93721
Phone: (559) 621-2489
Kaleb.Neufeld@fresno.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Carlos Norvani, NPDES Coordinator, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
cnorvani@lake-elsinore.org

Adriana Nunez, Staff Counsel, *State Water Resources Control Board*
Los Angeles Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 322-3313
Adriana.Nunez@waterboards.ca.gov

Eric Oppenheimer, Executive Director, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814-2828
Phone: (916) 341-5615
eric.oppenheimer@waterboards.ca.gov

Mathew Osborn, Water Utilities Superintendent, *City of San Jacinto*
270 Bissell Place, San Jacinto, CA 92583
Phone: (951) 654-4041
mosborn@sanjacintoca.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jeff Potts, Environmental Compliance Coordinator, *City of Corona*
Department of Water and Power, 755 Public Safety Way, Corona, CA 92880
Phone: (951) 736-2442
Jeff.Potts@ci.corona.ca.us

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Mark Prestwich, City Manager, *City of Hemet*
Claimant Contact
445 East Florida Avenue, Hemet, CA 92543
Phone: (951) 765-2301
mprestwich@hemetca.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Noah Rau, Public Works Director, *City of Hemet*
3777 Industrial Avenue, Corporation Yard, Hemet, CA 92545
Phone: (951) 765-3712
nrau@hemetca.gov

David Rice, *State Water Resources Control Board*
1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5161
david.rice@waterboards.ca.gov

Teresita Sablan, *State Water Resources Control Board*
Santa Ana Regional Water Quality Control Board and San Francisco Bay Regional Water Quality Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814
Phone: (916) 341-5174
Teresita.Sablan@waterboards.ca.gov

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Michaela Schunk, Legislative Coordinator, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500
mschunk@counties.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Jason Simpson, City Manager, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: (951) 674-3124
jsimpson@lake-elsinore.org

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Jason Uhley, General Manager - Chief Engineer, *Riverside County Flood Control*
Claimant Contact
and Water Conservation District, 1995 Market Street, Riverside, CA 95201
Phone: (951) 955-1201
juhley@rivco.org

Rosalva Ureno, City Traffic Engineer, *City of Corona*
400 S. Vicentia Ave, Corona, CA 92882
Phone: (951) 736-2266
Rosalva.Ureno@coronaca.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Robert Vestal, Assistant Director of Public Works, *City of Beaumont*
550 E. Sixth Street, Beaumont, CA 92223
Phone: (951) 769-8522
rvestal@beaumontca.gov

Emel Wadhwani, Senior Staff Counsel, *State Water Resources Control Board*
Office of Chief Counsel, 1001 I Street, Sacramento, CA 95814
Phone: (916) 322-3622
emel.wadhwani@waterboards.ca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov