



State Water Resources Control Board

October 17, 2025



VIA DROP BOX

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Executive Director
Commission on State Mandates
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Sacramento, CA 95814

COMMENTS OF THE STATE WATER RESOURCES CONTROL BOARD AND CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION ON DRAFT PROPOSED DECISION

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, 13-TC-01 and 13-TC-02

County of Los Angeles; Los Angeles County Flood Control District; and the Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier, Claimants

Dear Ms. Gmur:

The State Water Resources Control Board (State Water Board) and California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) (collectively, Water Boards) have reviewed the Draft Proposed Decision for the above-referenced Test Claims issued by the Commission on State Mandates (Commission) on September 2, 2025. The Water Boards appreciate the careful and thoughtful work of the Commission staff and concur with the conclusions reached in the Draft Proposed Decision that would deny reimbursement for numerous challenged provisions in Order No. R4-2012-0175 (test claim permit).

The Water Boards specifically disagree and/or seek clarification, however, with the conclusions finding that some of the challenged provisions constitute reimbursable state mandates. Specifically, the Draft Proposed Decision incorrectly concludes that (1) state and federal law required the Los Angeles Water Board to develop implementation plans for certain federally established requirements; and (2) any plans claimants develop to implement those federally established requirements are new programs or higher levels

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of service. Moreover, the Draft Proposed Decision impliedly allows claims for costs beyond those found to be reimbursable state mandates and narrowly construes the pre-2018 fee authority held by permittees. The Water Boards address these points below.

I. The Requirements to Develop and Submit a Plan to Achieve Wasteload Allocations in United States Environmental Protection Agency (USEPA)-Established¹ Total Maximum Daily Loads (TMDLs), Like the Requirements to Implement Them, Are Not State Mandates

A. The Los Angeles Water Board Does Not Have a Mandatory Duty to Develop an Implementation Plan for USEPA-Established TMDLS

The Draft Proposed Decision contains a comprehensive and detailed summary of the state and federal laws related to TMDLs. However, the summary incorrectly states that “[f]ederal law *requires* the TMDL to be incorporated into water quality management plans (i.e., the Basin Plan) to implement the TMDLs.”² This and other statements in the Draft Proposed Decision seem to imply that Commission staff have determined that the Los Angeles Water Board had a mandatory duty to develop an implementation plan for each USEPA-established TMDL. If the Commission intended to make that implication or determination, that is incorrect as a matter of law.

TMDLs, by definition, do not include implementation plans.³ Neither Clean Water Act section 303(d)⁴ nor its implementing regulations require that TMDLs include an implementation plan. As stated later in the Draft Proposed Decision, “Such decisions are generally left with the States.”⁵

The Water Boards agree that TMDLs, including any associated implementation plan developed under state law, are typically incorporated into a water quality control plan (known as basin plans). In general, Clean Water Act section 303(d)(2)⁶ requires states to incorporate approved TMDLs into a current water quality management plan (e.g., a basin plan). However, federal regulations at title 40, Code of Federal Regulations (40 CFR), section 130.6 clarifies that TMDLs are not required to be incorporated directly into a water quality management plan, but instead, requires that TMDLs and other plan elements “shall be included in the [water quality management] plan *or referenced* as

¹ The Draft Proposed Decision primarily uses the phrase “U.S. EPA-adopted TMDLs” to refer to TMDLs developed by USEPA. This comment letter uses “USEPA-established TMDLs” for consistency with the Test Claim permit.

² Draft Proposed Decision, p. 87 (emphasis added).

³ 40 CFR section 130.2 defines a TMDL as “The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments.” (40 CFR § 130.2(i).)

⁴ 33 U.S.C. § 1313(d), 40 CFR §§ 130.6 & 130.7.

⁵ Draft Proposed Decision, p. 133, citing Exhibit A, Test Claim 13-TC-01, page 986 (Fact Sheet).

⁶ 33 U.S.C. § 1313(d)(2).

part of the [water quality management] plan if contained in separate documents”.⁷ The governing regulations for impaired waters and TMDLs in 40 CFR section 130.7 likewise do not require states to develop TMDL implementation plans or to include any TMDL implementation plans in its water quality management plan.⁸ Therefore, the Water Boards disagree that federal law required the Los Angeles Water Board to incorporate a TMDL or a TMDL implementation plan—irrespective of whether it is established by the Los Angeles Water Board or USEPA— into its basin plan to implement it.

The Draft Proposed Decision also cites Water Code section 13242 for the proposition that regional board-adopted TMDLs contain implementation provisions, “which are incorporated into the Basin Plan.”⁹ This appears to track language in the Test Claim permit Fact Sheet.¹⁰ However, the Water Boards seek to clarify the relationship between Water Code sections 13240, 13242, and TMDLs. Water Code section 13240 requires a regional board to adopt a water quality control plan, which consists of: 1) beneficial uses to be protected, 2) water quality objectives to protect the beneficial uses, and 3) a program of implementation for achieving water quality objectives.¹¹ Water Code section 13242 states that programs of implementation “shall include a time schedule for the actions taken.”¹² TMDLs are generally considered a program of implementation for an existing water quality objective.¹³ Nevertheless, regional boards have significant latitude in how to address impaired water bodies and implementation of a TMDL may not necessarily require adoption of a separate implementation plan and/or a time schedule in the water quality control plan. In some cases, the appropriate response to the establishment of a TMDL may involve a water quality standards change, action of another agency, or no action at all.¹⁴ Nevertheless, the language in the Test Claim permit Fact Sheet references situations where the regional board chooses to develop an implementation plan such that it could rely on that implementation plan to include a compliance schedule in a permit. Contrary to the Draft Proposed Decision’s conclusions, there is no federal or state requirement to develop an implementation plan for a TMDL in the first place.

Moreover, even if an implementation plan is adopted, nothing in federal or state law requires a regional board to give responsible parties subject to a TMDL additional time

⁷ 40 CFR § 130.6(c)(1) (emphasis added).

⁸ 40 CFR § 130.7.

⁹ Draft Proposed Decision, p. 87.

¹⁰ Exhibit A, Test Claim 13-TC-01, page 980 (stating, “Pursuant to California Water Code sections 13240 and 13242, TMDL implementation plans adopted by the Regional Water Board *“shall include ... a time schedule for the actions to be taken [for achieving water quality objectives]”*) (emphasis added.)

¹¹ Wat. Code, § 13050(j).

¹² Wat. Code, § 13242.

¹³ State Water Board Resolution 2005-0050: Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structures and Options, p. 2, available at https://www.waterboards.ca.gov/water_issues/programs/tmdl/docs/iw_policy.pdf .

¹⁴ *Id.*

to comply with the TMDL. In fact, in some cases, a time schedule may be inconsistent with the TMDL itself—e.g., where a TMDL wasteload allocation is set at current loading (i.e., it requires no reduction in the pollutant loadings from anyone assigned that wasteload allocation). As such, even if a TMDL is incorporated into a water quality control plan, the law does not require a Water Board to adopt a separate implementation plan and/or schedule.

The Water Boards also disagree with the statement that “Schedules of compliance included in a permit must be approved by EPA...”.¹⁵ In most cases, compliance schedules in NPDES permits need only satisfy the minimum requirements in 40 CFR section 122.47 as well as any applicable state law.¹⁶ 40 CFR section 122.47 does not require USEPA to approve a compliance schedule and the specific circumstances in which USEPA is required to approve a compliance schedule (generally, toxic pollutants in non-MS4 permits) are not implicated by these Test Claims.

To the extent the Draft Proposed Decision implies or determines that the Los Angeles Water Board had a mandatory duty to adopt an implementation plan and/or time schedule in its Basin Plan for USEPA-established TMDLs, it did not. Nor could it as there is no mandatory duty to develop an implementation plan and/or a compliance schedule for TMDLs under state or federal law.

Importantly, the discussion on the background law is not necessary to reach the conclusion in the Draft Proposed Decision that “based on the plain language of the permit, there is practical compulsion and a state mandate to develop and submit a plan to implement [USEPA-established] TMDLs.”¹⁷ Since the Draft Proposed Decision’s summary discussion of this topic is not legally correct nor necessary for the Commission staff’s ultimate conclusion concerning USEPA-established TMDLs, the Water Boards respectfully request that any discussion of the Water Boards’ purported obligations to develop and adopt an implementation plan or obtain USEPA approval for a compliance schedule be removed from the Draft Proposed Decision or revised to reflect these comments.

¹⁵ Draft Proposed Decision, p. 89.

¹⁶ Note, the State Water Board has adopted Resolution 2008-0025, Policy for Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits (Compliance Schedule Policy), available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0025.pdf. However, the Compliance Schedule Policy does not apply to MS4 permits, like the Test Claim permit, that contain effluent limitations pursuant to Clean Water Act sections 402(p)(3)(B) and/or 303(d). By its own terms, the Compliance Schedule Policy at page 3 states “this Policy shall apply to all NPDES permits adopted by the Water Boards that must comply with Clean Water Act section 301(b)(1)(C).” USEPA has approved the Compliance Schedule Policy.

¹⁷ Draft Proposed Decision, p. 135.

B. The Requirement to Develop and Submit a Plan to Achieve Wasteload Allocations in USEPA-Established TMDLs Is Not a New Program or Higher Level of Service

The Water Boards agree with the conclusion in the Draft Proposed Decision that the development of a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP) to comply with Los Angeles Water Board-adopted TMDLs does not constitute a new program or higher level of service. The primary basis for the Commission staff's conclusion was:

- The plain language of the Test Claim permit states that the development of a WMP or EWMP is voluntary.¹⁸
- The requirement to develop a plan and implement best management practices (BMPs) and control measures is not new and does not provide a higher level of service to the public because the prior permit required covered municipal separate storm sewer system (MS4) permittees to have a countywide stormwater quality management program (SQMP).¹⁹

By the same logic, the Commission should also conclude that the development of a WMP or EWMP to address USEPA-established TMDLs is not a new or higher level of service.

As discussed in the Draft Proposed Decision, the prior permit, Order No. 01-182 (2001 Permit), already incorporated enforceable receiving water limitations as well as associated BMP implementation and reporting requirements.²⁰ Specifically, Part 2.1 of the 2001 Permit stated that “Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.”²¹ Part 2.3 of the 2001 Permit required permittees to comply with this provision by implementing control measures in accordance with their SQMP.²² Part 3.C of the 2001 Permit further directed permittees to “revise the SQMP ... so as to comply with wasteload allocations developed and approved pursuant to the process for the designation and implementation of Total Maximum Daily Loads (TMDLs) for impaired water bodies.”²³ Nothing in the plain language of the 2001 Permit limits this requirement to Los Angeles Water Board-adopted TMDLs. It applied to all established TMDLs, whether adopted by the Los Angeles Water Board or USEPA.

¹⁸ Draft Proposed Decision, p. 126.

¹⁹ Draft Proposed Decision, pp. 126-27.

²⁰ See *generally* Draft Proposed Decision, p. 116-120.

²¹ Exhibit A, Test Claim 13-TC-01, page 1191 (Order No. 01-182.).

²² *Id.*

²³ *Id.* at p. 1193.

Even if this language is interpreted to exclude USEPA-established TMDLs, the result is the same.²⁴ Part 2.3 of the 2001 Permit still required submission of a “Receiving Water Compliance Report” when municipal stormwater discharges were found by the permittee or the Los Angeles Water Board to be causing or contributing to an exceedance of an applicable water quality standard.²⁵ The Receiving Water Compliance Report was required to describe any additional BMPs that would be implemented to meet the water quality standard and to include an implementation schedule. As such, if a USEPA-established TMDL set load reductions for MS4 permittees to achieve compliance with water quality standards in an impaired receiving waterbody, then MS4 permittees (either on their own initiative or as directed by the Los Angeles Water Board) were already required to update their SQMPs to reflect receiving water compliance reports irrespective of the language in Part 3.C of the 2001 Permit. The requirements to develop a WMP or EWMP to address USEPA-established TMDLs are merely a change in form, not function.

For these reasons, the development of a WMP or EWMP for USEPA-established TMDLs does not impose a new program or higher level of service. To the extent the Commission concludes otherwise, it should find that the costs to comply with this requirement are de minimis.

C. Even if Development of a WMP or EWMP to Comply with USEPA-Established TMDLs is Considered a New Program or Higher Level of Service, Claimants were not Compelled as a Legal or Practical Matter to Develop These Plans

The Water Boards agree with the Commission’s staff’s conclusion in the Draft Proposed Decision that there is no legal compulsion to develop and submit a WMP or EWMP to implement USEPA-established TMDLs.²⁶ During the public comment period for the Test Claim permit, a commenter specifically asked for clarification on whether a WMP or EWMP was the only compliance option for USEPA-established TMDLs.²⁷ In response to this comment, the Los Angeles Water Board explained that “Permittees do not have to

²⁴ The Water Boards acknowledge the excerpts from the 2001 Permit administrative record quoted on page 110 of the Draft Proposed Decision appear to focus on TMDLs adopted by the Los Angeles Water Board. However, this merely reflects the timing of the establishment of TMDLs by USEPA in the Los Angeles Region (the first of which was established by USEPA in 2002). As there were no USEPA-established TMDLs in the Los Angeles Region when the 2001 Permit was issued, it was not a purposeful omission to not discuss USEPA-established TMDLs and only reference Los Angeles Water Board-adopted TMDLs.

²⁵ Exhibit A, Test Claim 13-TC-01, page 1191 (Order No. 01-182.).

²⁶ Draft Proposed Decision, p. 135.

²⁷ Los Angeles Water Board Responses to Comments, Total Maximum Daily Loads (General) Matrix (2012 AR, p. RB-19876). “2012 AR” refers to the administrative record for the Los Angeles Water Board’s issuance of Order No. R4-2012-0175.

participate in a WMP ... the WMP provides a mechanism for demonstrating compliance with the numeric WLAs assigned to the Permittee”.²⁸ This is consistent with the plain language of the Test Claim permit, which explicitly allows permittees subject to USEPA-established TMDLs to demonstrate compliance using monitoring data rather than BMP implementation.²⁹

The Water Boards, however, do not agree with the conclusion in the Draft Proposed Decision that “there is practical compulsion and a state mandate to develop and submit a plan to implement [USEPA-established] TMDLs.”³⁰ As discussed above, the Los Angeles Water Board did not have a mandatory duty to adopt an implementation plan and/or schedule for USEPA-established TMDLs. Whether or not the Los Angeles Water Board adopted an implementation plan through a basin plan amendment or other regulatory tool, permittees were obligated by the 2001 Permit to comply with state water quality standards.³¹ Allowing permittees to avail themselves of the WMP framework for the USEPA-established TMDLs (even though the final deadline for compliance had ostensibly passed) provided permittees additional flexibility and time to address these TMDLs. Just because claimants or other permittees had not met the requirements of prior permits (i.e., achieving compliance with water quality standards), does not transform an expressly optional compliance path into “practical compulsion.”

Nevertheless, Commission staff conclude in the Draft Proposed Decision that the permittees had no real choice but to develop a WMP to meet the wasteload allocations established by USEPA because the water bodies had been listed on the Clean Water Act section 303(d) list since 1996 and 1998.³² However, it should be noted that permittees that opt to comply with water quality-based effluent limits via direct monitoring can demonstrate compliance in a variety of ways. For example, permittees can demonstrate compliance by showing there was no discharge from their MS4, using outfall monitoring to establish their discharge did not exceed the applicable water quality-based effluent limitation, and, in some cases, through source investigations.³³ Additionally, several of the USEPA-established TMDLs specifically states that compliance is measured at the point of discharge and not in the receiving water (e.g., Echo Park Chlordane³⁴ and the Legg Lake Nutrients³⁵ TMDL wasteload allocations). As such, it cannot be automatically presumed that an exceedance in the receiving water is

²⁸ *Id.*

²⁹ Exhibit A, Test Claim 13-TC-01, page 747.

³⁰ Draft Proposed Decision, p. 135.

³¹ Exhibit A, Test Claim 13-TC-01, page 1190 (Order No. 01-182.)

³² Draft Proposed Decision, p. 136.

³³ Exhibit A, Test Claim 13-TC-01, page 747.

³⁴ Exhibit A, Test Claim 13-TC-01, page 1146 (Test Claim Permit, Attachment M)

³⁵ Exhibit A, Test Claim 13-TC-01, page 1148 (Test Claim Permit, Attachment O)

ipso facto an exceedance attributable to one or all of the MS4 permittees subject to a wasteload allocation in an USEPA-established TMDL.

Furthermore, even if a USEPA-established TMDL identified MS4 permittees as a source of pollutants to an impaired waterbody, this does not necessarily mean that MS4 permittees would actually need to take any action to meet these wasteload allocations. In fact, three USEPA-established TMDLs incorporated into the Test Claim permit assigned MS4 permittees wasteload allocations equal to their current loading, meaning that MS4 permittees likely would not need to do anything additional to comply. (See e.g., Santa Monica Bay TMDL for DDTs and PCBs,³⁶ Ballona Creek Wetlands TMDL for Sediments and Invasive Exotic Vegetation,³⁷ and Los Angeles Area Lakes TMDLs: Echo Park Lake Nutrients³⁸). The Los Angeles Water Board acknowledges that it did not assess whether permittees could comply with the USEPA-established wasteload allocations at the time of permit development due to its own timing constraints.³⁹ However, permittees that did not want to develop a WMP or EWMP had six months from the effective date of the Test Claim permit to determine if they wanted to develop a WMP or EWMP.⁴⁰ Additionally, permittees could request a Time Schedule Order at any time.⁴¹

Moreover, to the extent the Commission is concerned that claimants and other permittees were at risk of immediate enforcement actions,⁴² these concerns are unfounded. The vast majority of USEPA-established wasteload allocations were expressed annually. Specifically, the following USEPA-established TMDLs have annual wasteload allocations:

³⁶ 2012 AR, p. RB-38698 (“Because existing stormwater loads from the watersheds are lower than the calculated total allowable loads to achieve sediment targets, the wasteload allocations for stormwater in this TMDL are based on existing load estimates of 28 g/yr for DDT and 145 g/yr for PCBs.”).

³⁷ 2012 AR, p. RB-AR37621 (“Since the current existing discharge of sediment load is not contributing to the listed impairments or otherwise causing a negative impact to Ballona Creek Wetlands, this TMDL establishes WLAs based on existing conditions.”).

³⁸ 2012 AR, p. RB-37915 (“Note that WLAs are equal to existing loading rates because no reductions in loading are required.”).

³⁹ Exhibit A, Test Claim 13-TC-01, page 987 (Fact Sheet)

⁴⁰ Exhibit A, Test Claim 13-TC-01, page 655.

⁴¹ Note, the Test Claim permit includes specific provision relating to Time Schedules Order in Part VI.E.4 for state adopted TMDLs. (Exhibit A, Test Claim 13-TC-01, p. 747-748.) While the Los Angeles Water Board acknowledges that there is not a similar provision for USEPA established TMDLs, Time Schedule Orders are issued under independent state law authority in sections 13300 and 13385(j)(3) of the Water Code. (Wat. Code, §§ 13300 & 13385(j)(3).)

⁴² See generally, Draft Proposed Decision, pp. 136-39.

- Santa Monica Bay TMDL for DDTs and PCBs⁴³
- Ballona Creek Wetlands TMDL for Sediments and Invasive Exotic Vegetation⁴⁴
- Los Angeles Area Lakes TMDLs:
 - Lake Calabazas Nutrient⁴⁵
 - Echo Park Lake Nutrient⁴⁶
 - Echo Park Lake PCBs⁴⁷
 - Echo Park Lake Chlordane⁴⁸
 - Echo Park Lake Dieldrin⁴⁹
 - Echo Park Lake Trash⁵⁰
 - Legg Lake Nutrient⁵¹
 - Peck Road Park Lake Nutrient⁵²
 - Peck Road Park Lake PCBs⁵³
 - Peck Road Park Lake Chlordane⁵⁴
 - Peck Road Park Lake DDTs⁵⁵
 - Peck Road Park Lake Dieldrin⁵⁶
 - Peck Road Park Lake Trash⁵⁷
 - Puddingstone Reservoir Nutrient⁵⁸
 - Puddingstone Reservoir Mercury⁵⁹
 - Puddingstone Reservoir PCBs⁶⁰

⁴³ Exhibit A, Test Claim 13-TC-01, p. 1100 (Attachment M)

⁴⁴ Exhibit A, Test Claim 13-TC-01, p. 1115 (Attachment M)

⁴⁵ Exhibit A, Test Claim 13-TC-01, p. 1144 (Attachment O)

⁴⁶ Exhibit A, Test Claim 13-TC-01, p. 1145 (Attachment O)

⁴⁷ Exhibit A, Test Claim 13-TC-01, p. 1145 (Attachment O).

⁴⁸ Exhibit A, Test Claim 13-TC-01, p. 1146 (Attachment O).

⁴⁹ Exhibit A, Test Claim 13-TC-01, p. 1147 (Attachment O).

⁵⁰ Exhibit A, Test Claim 13-TC-01, p. 1147 (Attachment O).

⁵¹ Exhibit A, Test Claim 13-TC-01, p. 1148 (Attachment O).

⁵² Exhibit A, Test Claim 13-TC-01, p. 1149 (Attachment O).

⁵³ Exhibit A, Test Claim 13-TC-01, p. 1149-50 (Attachment O).

⁵⁴ Exhibit A, Test Claim 13-TC-01, p. 1151 (Attachment O).

⁵⁵ Exhibit A, Test Claim 13-TC-01, p. 1152 (Attachment O).

⁵⁶ Exhibit A, Test Claim 13-TC-01, p. 1153 (Attachment O).

⁵⁷ Exhibit A, Test Claim 13-TC-01, p. 1154 (Attachment O).

⁵⁸ Exhibit A, Test Claim 13-TC-01, p. 1156 (Attachment P).

⁵⁹ Exhibit A, Test Claim 13-TC-01, p. 1157 (Attachment P).

⁶⁰ Exhibit A, Test Claim 13-TC-01, p. 1157 (Attachment P).

- Puddingstone Reservoir Chlordane⁶¹
- Puddingstone Reservoir Dieldrin⁶²
- Puddingstone Reservoir DDTs.⁶³

Therefore, compliance determinations for the above TMDLs and any associated enforcement could not have occurred immediately even if a permittee elected to forgo development of a WMP or EWMP.

Given that the specter of immediate noncompliance is vastly overstated in the Draft Proposed Decision, the Draft Proposed Decision should be updated to find that there is not a reimbursable state mandate to develop a WMP or EWMP to address USEPA-established TMDLs because there was no practical compulsion— permittees had a choice about whether to develop and submit these plans.

- II. If the Commission Finds a Reimbursable State Mandate for Development of a WMP or EMP to address USEPA-Established TMDLs, Reimbursement Must Be Limited Only to Costs to Develop the Portion of the Plan related to a USEPA-Established TMDL and Not for the Development of the Plan in its Entirety

If the Commission concludes that there is a reimbursable state mandate for the costs of developing a WMP or EWMP to address USEPA-established TMDLs, the Commission must expressly state that claimants are not entitled to reimbursement for the full cost of developing these plans.

The Draft Proposed Decision makes clear that the Commission would deny reimbursement for costs expended to develop a WMP or EWMP to address Regional Board-adopted TMDLs. As stated in section IV.B.2.f. of the Draft Proposed Decision, “Although the permit provides an incentive to develop a WMP or EWMP, development of the WMP or EWMP [to address Regional Board-adopted TMDLs] *is not mandated by the state* based on the plain language of the test claim permit.”⁶⁴ Part. IV.E of the Draft Proposed Decision further clarifies that the Test Claim permit only results in costs mandated by the state “from December 28, 2012 through January 31, 2017, for the New State-Mandated Requirements *in Part VI.E.1.c. and Attachments M, O, P, and Q* (which incorporate by Reference Part VI.E.3. of the Test Claim permit).”⁶⁵

Nonetheless, if the Draft Proposed Decision is adopted, the Water Boards are concerned that claimants will attempt to transform an otherwise voluntary plan into a state-mandated program merely because a plan also happens to mention or address an

⁶¹ Exhibit A, Test Claim 13-TC-01, p. 1158 (Attachment P).

⁶² Exhibit A, Test Claim 13-TC-01, p. 1159 (Attachment P).

⁶³ Exhibit A, Test Claim 13-TC-01, p. 1160 (Attachment P).

⁶⁴ Draft Proposed Decision, p. 125 (emphasis added).

⁶⁵ Draft Proposed Decision, p. 216 (formatting removed; emphasis added).

USEPA-established TMDL. The Water Boards therefore request that clarifying language be added to the Draft Proposed Decision to address reimbursements for WMPs and EWMPs that implement USEPA and Los Angeles Water Board TMDLs in a single plan. At a minimum, the Water Boards request language that makes it abundantly clear that claimants are not entitled to reimbursement for the costs to develop a WMP or EWMP in its entirety and that any claimed costs would be limited only to the costs to develop the portion(s) of the WMP or EWMP related to a USEPA-established TMDL and not for development of the plan related to Regional Board-adopted TMDLs. Claimable reimbursement activities should be prorated to cover only those costs expended to satisfy the requirements in Part IV.E.3 of the Test Claim permit (i.e., the costs to compile data and/or develop time schedules and milestones unique to the USEPA-established TMDLs). However, to the extent claimants' costs to address USEPA-established TMDLs in their WMP or EWMP cannot be segregated from the costs expended to address Los Angeles Water Board-adopted TMDLs, the Draft Proposed Decision should also find that these costs are de minimis and not entitled to reimbursement.

III. The Permittees Have Sufficient Fee Authority for the Entire Test Claim Period Even Where Voter Approval is Required

To the extent the Commission determines there are any state mandated costs prior to January 1, 2018, claimants have the necessary fee authority and are not entitled to any reimbursement.

The Draft Proposed Decision discusses local agency constitutional and statutory authorities to raise fees, including what courts have found to constitute sufficient fee authority as a legal matter within the meaning of Government Code section 17556, subdivision (d).⁶⁶ The Water Boards agree with the Draft Proposed Decision's conclusion that permittees have sufficient fee authority based on *Paradise Irrigation District v. Commission on State Mandates* (2019) 33 Cal.App.5th 174 (*Paradise Irrigation District*) and the Legislature's enactment of Government Code sections 57350 and 57351 for costs incurred beginning January 1, 2018. Notwithstanding *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 (2022 *Department of Finance*), the Water Boards maintain that the rationale in *Paradise Irrigation District* applies to voter approval requirements and permittees have sufficient fee authority for all costs.

The Water Boards disagree with the holding in the 2022 *Department of Finance* decision and the conclusion in the Draft Proposed Decision that permittees lack fee authority for costs incurred prior to 2018 due to Proposition 218's voter approval provisions.⁶⁷ The Water Boards maintain that permittees had sufficient fee authority as a legal matter under Government Code section 17556(d) for the entire test claim period and are not entitled to reimbursement for any costs. California courts have consistently

⁶⁶ Draft Proposed Decision, pp. 239-43.

⁶⁷ Draft Proposed Decision, pp. 243-45.

held that fee authority is purely a question of legal authorization.⁶⁸ “[F]actual considerations of practicality” do not defeat a local agency’s fee authority.⁶⁹ Even where Proposition 218 requires voter approval provision for fees to pay for specific state mandates, the permittees still have fee authority and expenditures for mandates are not reimbursable.

In *Paradise Irrigation District*, the court of appeal considered whether the majority protest procedure added by Proposition 218 deprived local agencies of authority to impose fees for water service.⁷⁰ California Constitution, Article XIII D, section 6(a), requires a local agency to identify parcels subject to a new fee, calculate the fee amount, and provide notice to affected property owners.⁷¹ If a majority of the property owners submit written protests against the fee, the fee may not be imposed.⁷²

The *Paradise Irrigation District* court held that the “majority protest procedures are properly construed as a power-sharing arrangement between the districts and their customers, rather than a deprivation of fee authority.”⁷³ It explained that, when considering how voter powers affect the ability of local governments to impose fees, courts “presume local voters will give appropriate consideration and deference to state mandated requirements”⁷⁴ “Although this power-sharing arrangement has the potential for conflict, we must presume that both sides will act reasonably and in good faith.”⁷⁵ Further, the fact that, “as a matter of practical reality, the majority protest procedure allows water customers to defeat the District’s authority to levy fees” was not dispositive; “the inquiry into fee authority constitutes an issue of law rather than a question of fact.”⁷⁶

The *Paradise Irrigation District* court did not consider whether a local agency has fee authority as a legal matter where fees or assessments are subject to voter approval requirements. However, the court’s reasoning should apply with equal force where Proposition 218 requires pre-approval by a majority vote of the affected property owners (or, alternatively, by a two-thirds vote of the electorate). That the governing body of a municipality (e.g., County Board of Supervisors or City Council) and the affected property owners who elected that body share power to impose fees does not mean

⁶⁸ *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401 [holding that the focus under Government Code section 17556 is whether a local agency has “authority, i.e., the right or power, to levy fees sufficient to cover the costs:]; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

⁶⁹ *Paradise Irrigation Dist. v. Commission on State Mandates* (2019) 33 Cal.App.5th 174, 195.

⁷⁰ *Id.* at p. 182.

⁷¹ Cal. Const., art. XIII D, § 6, subd. (a), par. (1).

⁷² Cal. Const., art. XIII D, § 6, subd. (a), par. (2).

⁷³ *Paradise Irrigation*, *supra*, 33 Cal.App.5th at p. 182.

⁷⁴ *Id.* at p. 194, citing *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 220.

⁷⁵ *Id.* at p. 192.

⁷⁶ *Id.*, at p. 195, citing *Connell*, *supra*, 59 Cal.App.4th at p. 401.

claimants are deprived of fee authority under Government Code section 17556. And the fact that property owners in claimants' local jurisdictions could theoretically withhold approval—just as a majority of the governing body could theoretically withhold approval to impose a fee—does not undermine claimants' police power; that power exists regardless of what the property owners, or the governing body, might decide about any given fee.

In *2022 Department of Finance*, the State Water Board and the Regional Water Quality Control Board, San Diego Region argued that the court should extend the reasoning in *Paradise Irrigation District* to Proposition 218 pre-approval requirements. The Third District Court of Appeal did not agree.⁷⁷ Other districts are not bound by the Third District Court of Appeal's decision and could decide differently,⁷⁸ as could the California Supreme Court. As such, the Water Boards maintain their arguments on this issue.

IV. Minor Corrections

Footnote 257 in the Draft Proposed Decision does not list any covered permittees for the TMDLs in the Los Angeles River Watershed Management Area. It is missing the following permittees: Arcadia, Bradbury, Calabasas, Duarte, El Monte, Irwindale, Los Angeles, Montebello, Sierra Madre, South El Monte, and County of Los Angeles.⁷⁹

Footnote 257 in the Draft Proposed Decision also does not list any covered permittees for the TMDLs in the San Gabriel River Watershed Management Area. It is missing the following permittees: Azusa, Claremont, Irwindale, La Verne, Pomona, San Dimas, County of Los Angeles, and Los Angeles County Flood Control District.⁸⁰

Footnote 259 in the Draft Proposed Decision is incomplete and missing the following permittees: Arcadia, Artesia, Azusa, Baldwin Park, Bellflower, Bradbury, Cerritos, Claremont, Covina, Diamond Bar, Downey, Duarte, El Monte, Glendora, Hawaiian Gardens, Industry, La Habra Heights, La Mirada, La Puente, La Verne, Lakewood, County of Los Angeles, and Los Angeles County Flood Control District.⁸¹

Footnote 260 in the Draft Proposed Decision is incomplete and missing the following permittees: Agoura Hills, Calabasas, and Hidden Hills.⁸²

⁷⁷ See *2022 Department of Finance*, 85 Cal.App.5th at pp. 577–81.

⁷⁸ See, e.g., *People v. Kisling* (2014) 223 Cal.App.4th 544, 547–48, quoting *Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1489, fn. 10 (“ “[T]here is no “horizontal stare decisis” within the Court of Appeal.” ’ ”).

⁷⁹ See Table K-5 in the Test Claim Permit (Test Claim 13-TC-01, p. 1069 (Attachment K).

⁸⁰ See Table K-6 in the Test Claim Permit (Test Claim 13-TC-01, p. 1072 (Attachment K).

⁸¹ See Table K-6 in the Test Claim Permit (Test Claim 13-TC-01, p. 1072 (Attachment K).

⁸² See Table K-2 in the Test Claim Permit (Test Claim 13-TC-01, p. 1065 (Attachment K).

V. Conclusion

Therefore, while the Water Boards agree with the Draft Proposed Decision's reasoning to deny reimbursement for many of the challenged provisions in the Test Claim, the Water Boards request that the Commission staff reconsider its conclusions and make the limited changes to the Draft Proposed Decision described above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adriana Nuñez', with a stylized flourish at the end.

Adriana Nuñez
Attorney IV

cc: Service List **[via Commission Drop Box]**

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 October 20, 2025, I served the:

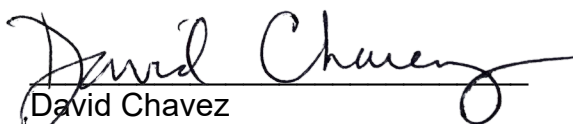
- **Current Mailing List dated October 16, 2025**
- **Claimants' Comments on the Draft Proposed Decision filed October 17, 2025**
- **Finance's Comments on the Draft Proposed Decision filed October 17, 2025**
- **Water Boards' Comments on the Draft Proposed Decision filed October 17, 2025**

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175, 13-TC-01 and 13-TC-02

County of Los Angeles; Los Angeles County Flood Control District; and the Cities of Agoura Hills, Bellflower, Beverly Hills, Carson, Cerritos, Commerce, Downey, Huntington Park, Lakewood, Manhattan Beach, Norwalk, Pico Rivera, Rancho Palos Verdes, Redondo Beach, San Marino, Santa Clarita, Santa Fe Springs, Signal Hill, South El Monte, Vernon, Westlake Village, and Whittier, 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 October 20, 2025 at Sacramento, California.


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Last Updated: 10/16/25

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Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2012-0175

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City of Lakewood
City of Manhattan Beach
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City of Pico Rivera
City of Rancho Palos Verdes
City of Redondo Beach
City of Santa Fe Springs
City of Signal Hill
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City of Vernon
City of Westlake Village
City of Whittier
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TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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