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October 17, 2025

VIA CSM DROPBOX

Ms. Juliana F. Gmur
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Claimants' Comments 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, San Marino, Santa Clarita, Santa Fe Springs, Signal Hills, South El Monte, Vernon, Westlake Village, and Whittier, Claimants

Dear Ms. Gmur:

Attached please find the comments of Claimants 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 Hills, South El Monte, Vernon, Westlake Village, and Whittier on the Draft Proposed Decision issued by Commission staff on the above-referenced Joint Test Claim.

Please let me know if you have any questions. Thank you.

BURHENN & GEST LLP

Ms. Juliana F. Gmur
October 17, 2025
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I declare under penalty of perjury that the foregoing, signed on October 17, 2025, is true and correct to the best of my personal knowledge, information, or belief.

Very truly yours,

/s/

Howard Gest
Claimants' Representative
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**CLAIMANTS' COMMENTS 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***

CLAIMANTS' COMMENTS 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*

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CLAIMANTS' COMMENTS ON DRAFT PROPOSED DECISION

Claimants hereby submit their comments on the Draft Proposed Decision ("DPD") issued on September 2, 2025.

I. SUMMARY OF COMMENTS

On November 8, 2012, the Los Angeles Regional Water Quality Control Board ("Regional Board") adopted a Municipal Separate Storm Sewer System ("MS4") Permit for the County of Los Angeles, the Los Angeles County Flood Control District and 84 Cities (the "Test Claim Permit"), effective December 26, 2012. This permit replaced a prior MS4 permit issued to these permittees that had been issued in 2001 (the "2001 Permit").

On June 30, 2014, Claimants filed a test claim seeking reimbursement for mandates included in the test claim permit. Commission staff has now issued a Draft Proposed Decision which finds that preparing an implementation plan for U.S. EPA adopted Total Maximum Daily Loads ("TMDLs") is a reimbursable mandate, but none of the permit's other requirements are reimbursable. DPD at 257-258.

Claimants agree with the Draft Proposed Decision that preparing an implementation plan for U.S. EPA-adopted TMDLs is a reimbursable state mandate. The Draft Proposed Decision errs, however, with respect to the following:

1. Implementation of all the TMDLS in the test claim permit is a reimbursable mandate for the following reasons:
 - a. Implementation of the TMDLs is a new program or higher level of service.
 - b. It is error to compare the TMDLs in the test claim permit to the 2001 Permit's receiving water limitations.
 - c. Preparation of a Watershed Management Program or Enhanced Watershed Management program is practically compelled.
2. The TMDL monitoring program in the test claim permit was not a requirement of the 2001 permit. This monitoring program is thus a new program or higher level of service, particularly for the Cities and County Claimants who were not required to do this specific monitoring before.
3. The test claim permit's non-stormwater discharge prohibitions obligated Claimants to perform services not required by the 2001 Permit.
4. The minimum control measures required Claimants to perform services not required under the 2001 permit.

5. The fee authority section is in part in error, in that the Commission should not rely on SB 231 because it conflicts with the intent of the voters in adopting Article XIII D, section 6 of the California Constitution.

II. THE TMDLS INCORPORATED INTO THE TEST CLAIM PERMIT ARE NEW PROGRAMS OR HIGHER LEVELS OF SERVICE

A. The TMDLs

As set forth in the Draft Proposed Decision, the test claim permit includes 33 TMDLs, 31 of which were not present in the 2001 Permit. Of these, 32 are at issue. (The Middle Santa Ana River Watershed Bacterial Indicator TMDL is not at issue.) See Test Claim Permit, Part VI.E.1 and Attachments L through P and Q; DPD at 78-83, 91 (list of Regional Board and U.S. EPA adopted TMDLs; exclusion of Middle Santa Ana River Watershed Bacterial Indicator TMDL).

Test Claim Permit Part VI.E.1.c requires Claimants to:

comply with the applicable water quality-based effluent limitations and/or receiving water limitations contained in Attachments L through R, consistent with the assumptions and requirements of the WLAs established in the TMDLs, including implementation plans and schedules, where provided for in the State adoption and approval of the TMDL (40 CFR § 122.44(d)(1)(vii)(B); Cal. Wat. Code §13263(a)).

Test Claim Permit at 141.

It is undisputed that the 2001 Permit did not contain 30 of these TMDLs, as well as the wet weather requirements of the Marina del Rey Bacteria TMDL. Nevertheless, the Draft Proposed Decision finds that the requirement to comply with these TMDLs is not a new program or higher level of service because (1) the 2001 Permit contained a provision that provided that permittees should amend their Stormwater Quality Management Plan (“SQMP”) to include the requirements of these TMDLs as they were adopted, and (2) the 2001 Permit prohibited discharges that would cause or contribute to exceedances of “receiving water limitations.” DPD at 109-112, 112-120. This finding is erroneous as a matter of law and fact.

TMDLs are adopted pursuant to the federal Clean Water Act (“CWA”). The CWA provides that states shall identify waters for which effluent limitations required by 33 U.S.C. §§ 1311(d)(1)(A) and (B) are not stringent enough to implement any “water quality standard” applicable to such waters. 33 U.S.C. § 1313(d)(1)(A). See *City of Arcadia*, 265 F.Supp.2d 1142, 1144 (N.D. Calif. 2003).

“Water quality standards” are adopted by the state. These standards consist of the designated uses of a navigable water and the water quality criteria for such waters to support such uses. See 33 U.S.C. § 1313(c)(2)(A).

A state must establish a TMDL for those waters for which effluent limitations are not stringent enough to implement any water quality standard. 33 U.S.C. § 1313(d)(1)(A). The TMDL must be established at a level necessary to implement the applicable 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. 33 U.S.C. § 1313(d)(1)(C).

Under the federal CWA regulations, a TMDL is composed of both “Wasteload Allocations” (“WLAs”) and Load Allocations (“LAs”). 40 C.F.R. § 130.2(g) and (h). The TMDL is the sum of the individual WLAs for point sources and LAs for non-point sources and natural background. 40 C.F.R. § 130.2(i).

The test claim permit requires permittees to comply with the TMDLs referenced in the Permit and their associated WLAs. These WLAs are numeric limitations on the permittees’ discharges; the permittees must develop programs to limit the pollutants in their discharges to these WLAs. Permit Part VI.E.1.c; Permit, Attachments L through R.

B. The TMDLs Are Not Mandates Until Incorporated into an Enforceable Stormwater Permit

As the Proposed Draft Decision recognizes, TMDLs “function primarily as planning devices and are not self-executing.” *City of Arcadia*, 265 F.Supp.2d at 1144. As the *City of Arcadia* court said:

TMDLs are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans. [Citation] A TMDL does not, by itself, prohibit any conduct or require any actions. Instead each TMDL represents a goal that may be implemented by adjusting pollutant discharge requirements in individual NPDES permits or establishing nonpoint source controls.

Id. See also DPD at 87-88. This is an important distinction. Because TMDLs are not self-executing, they cannot constitute an enforceable obligation until they are formally incorporated into a NPDES permit. Thus, in this test claim, implementation requirements for the TMDLs were not an enforceable mandate for permittees until those TMDLs were formally incorporated into the test claim permit.

C. The Regional Board was Not Required to Include TMDL WLAs in the Test Claim Permit

The Draft Proposed Decision states that the CWA required the Regional Board “to include effluent limits in compliance with ‘all applicable water quality standards’ and ‘consistent with the assumptions and requirements of any available wasteload allocation for the discharge.’” DPD at 86. The Draft Proposed Decision cites 40 CFR Section 122.44(d)(1)(vii) for this assertion.

This assertion is wrong as a matter of law. The Regional Board was not required to include the TMDL provisions in the test claim permit.

As set forth above, TMDL provisions are solely for the purpose of implementing water quality standards. Federal law, however, does not require municipal stormwater permits to contain provisions to meet water quality standards. *Defenders of Wildlife v. Browner* (“*Defenders*”), 191 F.3d 1159, 1164-65 (9th Cir. 1999). Instead, municipal permits must contain controls “to reduce the discharge of pollutants to the maximum extent practicable” 33 U.S.C. § 1342(p)(3)(B)(iii); *Defenders*, 191 F.3d at 1165. EPA or a state has the *discretion* to require compliance with water quality standards pursuant to the provisions of 33 U.S.C. § 1342(p)(3)(B)(iii), which also provides that municipal stormwater permits shall contain “such other provisions as the Administrator or the State *determines appropriate* for the control of such pollutants.” (Emphasis supplied.) Because requiring compliance is discretionary, however, it is not mandated by federal law. *Defenders*, 191 F.3d at 1166-67.

Similarly, the federal stormwater regulations do not require municipal stormwater permits to contain TMDL provisions. 40 C.F.R. § 122.44(d)(1)(vii)(B) addresses the interrelationship between TMDLs and NPDES permits. This regulation provides that NPDES permits are to include conditions consistent with the assumptions and requirements of TMDL waste load allocations “when applicable.” 40 C.F.R. § 122.44. Because MS4 permits are not required to contain provisions to comply with water quality standards, TMDL wasteload allocations (“WLAs”) intended to achieve such standards are not “applicable.”

The plain language of Section 122.44 illustrates this point. Section 122.44 provides, in pertinent part:

In addition to the conditions established under §122.43(a), each NPDES permit shall include conditions meeting the following requirements *when applicable*.

. . . .

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) *Achieve water quality standards* established under section 303 of the CWA, including State narrative criteria for water quality.

. . . .

(vii) When developing water-quality based effluent limits under *this paragraph* the permitting authority shall ensure that:

.

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

(Emphasis added.)

In construing a regulation, one must first look to the text of the regulation itself. *Price v. Starbucks Corp.* (“The rules of statutory construction apply to the interpretation of regulations. The chosen words of the regulation are the most reliable indicator of intent. We give the regulatory language its plain, commonsense meaning.” (citations omitted)).¹ Here that text is explicit: the requirements of 40 CFR § 122.44 apply to NPDES permits only “*when applicable*.” Effluent limits must be consistent with TMDLs when developing water-quality based effluent limits under “*this paragraph*,” *i.e.* to implement water quality standards. Again, compliance with water quality standards are not required with respect to municipal stormwater permits. *Defenders*, 191 F.3d at 1164-1165.

Second, further proof that not all subsections of Section 122.44 are applicable to MS4 permits is the fact that many provisions of Section 122.44 are simply not present in the test claim permit. For example, the test claim permit does not reference Sections 122.44(j) and (m), which address pretreatment for publicly owned treatment works and privately owned treatment works. These subsections are not applicable because discharges of treated sewage effluent from a treatment plant have nothing to do with MS4 stormwater discharges. Other subsections of Section 122.44 not included in the test claim permit include subsections (b)(2), (b)(3), (c), (g), and (i)(1)(i) and (ii), addressing standards for sewage sludge, requirements for cooling water intake structures, reopening clauses for treatment works treating domestic sewage, and measuring the mass of each pollutant discharged under the permit and the volume of effluent discharged from each outfall.

In fact, the only subsections of Section 122.44 that mention stormwater discharges are Sections 122.44(k) and (s), which address BMPs and construction activity. Neither, however, requires compliance with water quality standards or inclusion of TMDL WLAs in MS4 permits.

Third, the language of Section 122.44 (d) itself indicates that it is not applicable to MS4 permits. Subsection (d) is entitled and addresses “Water Quality Standards and State Requirements.” Subsection (d)(1), containing the provision relied on in the Proposed Draft, subsection (d)(1)(vii)(B), states that it is to “achieve water quality standards.” As set forth above, however, MS4 permits are *not* required to contain provisions to achieve water quality standards but only to contain permit provisions that “reduce the discharge of pollutants to the maximum extent practicable.”² Accordingly, the

¹ (2011) 192 Cal.App.4th 1136, 1145-1146.

² *Defenders*, 191 F.3d at 1164-65; *BIA*, 124 Cal.App.4th at 886.

TMDL provisions of Section 122.44(d)(1), which address compliance with water quality standards, are not “applicable” to MS4 permits.

The provisions of 40 CFR Section 122.44 are reflected in an NPDES permit, including an MS4 permit, only “when applicable.” If not applicable, those provisions in 40 CFR Section 122.44 are not required to be included in the permit. Here, as set forth above, MS4 permits are not required to have provisions to meet water quality standards. Such a requirement is only discretionary. Because compliance with water quality standards is discretionary, Section 122.44(d)(vii)(B), which addresses inclusion of TMDL requirements in order to meet water quality standards, is not “applicable.” The Draft Proposed Decision’s statements and assertions that the test claim permit was required to contain effluent limitations in the form of TMDL waste load allocations (WLAs), consistent with the TMDLs, is erroneous as a matter of law.

D. With the Exception of the Marina del Rey Summer Dry Weather TMDL, The Regional Board Adopted TMDLs in the Test Claim Permit Are a New Program or Higher Level of Service

The Draft Proposed Decision first finds that the TMDLs are not a new program or higher level of service because the 2001 Permit contained Permit Part 3.C, which called for the revision of the permittees’ SQMP to incorporate the TMDLs as they were adopted without further action. That provision, however, is unlawful, and was never implemented. Accordingly, it is an error of law and of fact to rely on 2001 Permit Part 3.C to find that the inclusion of the TMDLs in the test claim permit was not a new program or higher level of service.

A mandate is “new” if the local government had not previously been required to institute it. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189. A “higher level of service” exists where the mandate results in an increase in the actual level or quality of governmental services provided. *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 877. These determinations are made by comparing the mandate with pre-existing requirements. *Id.* at 878.

As set forth above, TMDLs are not self-executing. In order to require MS4 permittees to comply with the TMDL provisions, the TMDL WLAs must be incorporated into the MS4 permit. Again, otherwise, they are not a mandate of the permittees.

1. It is an Error of Law to Find that Part 3.C of the 2001 Permit Incorporated the TMDLs into the 2001 Permit

The Draft Proposed Decision first relies on 2001 Permit Part 3.C to find that the TMDLs were included in the 2001 Permit. DPD at 109-110. Because Part 3.C purports to incorporate the TMDLs into the permit *without notice or hearing*, however, it was unlawful and could not accomplish that purpose.

Under the CWA, it is well established that an NPDES permit cannot be modified without public notice. 40 CFR Section 122.62, which addresses modification or revocation and issuance and reissuance of NPDES permits, specifically provides “When the Director receives any information . . . he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exists. . . . [A] draft permit must be prepared and other procedures in part 124 (or procedures of an approved state program) followed. 40 CFR Section 124.5(c), applicable to state programs, specifically provides that “if the Director tentatively decides to modify or revoke and reissue a permit . . . he or she shall prepare a draft permit under 40 CFR Section 124.6 incorporating the proposed changes.” 40 CFR 124.6(e) provides in pertinent part that “All draft permits shall be publicly noticed” and “The Regional Administrator shall give notice of opportunity for a public hearing” See also 40 CFR Sections 124.10 and 124.12.

In *Ohio Valley Environmental Coalition, Inc. v. Apogee Coal Company, LLC*, 555 F. Supp. 2nd 640 (S.D. W. Va. 2008) the court found that a state modification of a permit “clearly requires public notice.” *Id.* at 647. See also *Id.* at 646 (“Federal and State regulations provide that for a major modification to be effective, a draft permit must be issued and the public must be advised of that draft permit.”)

Similarly, in *United States v. Ohio Edison Company*, 725 F. Supp. 928 (N. D. Ohio 1989), the court found that a state environmental protection agency could not suspend a requirement of an NPDES permit without first providing public notice and hearing. 725 F. Supp. at 932. Standing alone, the letter of the permitting agency was not effective to modify the permit. *Id.* at 933.

The California Water Code also clearly states that a permit cannot be modified without notice and hearing. Because findings are required to support the permit’s terms, the issuance or modification of an NPDES permit is an adjudicative hearing. 23 Cal. Code Reg. 648(a). 23 Cal. Code Reg. 648(b) provides that, “All adjudicative proceedings before the State Water Resources Control Board or any regional water quality control board, including one to adopt or modify an NPDES permit, is governed by the Water Board’s regulations, Chapter 4.5 of the Administrative Procedure Act, commencing with Government Code Section 11400, Sections 801-805 of the Evidence Code, and Government Code Section 11513.” The APA, in California Government Code Section 11425.10(a)(1) provides that, in an adjudicative proceeding, “the agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.”

Here, 2001 Permit Part 3.C is not in compliance with either the federal or California regulations or California Government Code Section 11425.10(a)(1). Part 3.C, which calls for the revision of the SQMP and the automatic incorporation of the TMDLs, without notice or hearing, could not (and did not, see Section II.D below) operate to incorporate by reference TMDLS as they were adopted in the future because Permit Part 3.C did not provide for notice or hearing before the permit was modified.

Nor were the issues addressed at the TMDL hearings the same as those that would need to be addressed at a permit modification hearing. The criteria for adopting TMDLs is significantly different than the criteria for MS4 permit requirements. TMDLs are a planning device, and WLAs must be set at the level that will result in compliance with water quality standards. 40 CFR Section 130.7(c)(1) ("TMDLs shall be established at levels necessary to attain the applicable narrative and numeric [water quality standard] with seasonal variations and margin of safety.") In contrast, as discussed above (see Section II.C above), MS4 permits are not required to comply with water quality standards. Instead, the MS4 permit terms are "to reduce the discharge to the maximum extent practicable" 33 U.S.C.1342(p)(3)(B)(iii). Thus the issues addressed at a TMDL hearing are significantly different than the issues addressed when adopting a MS4 permit.

Moreover, a NPDES permit is required to be supported by a fact sheet or findings of fact. 40 CFR Section 124.8; Water Code Section 13377 ("The State Board or the Regional Boards shall... issue waste discharge requirements... which apply and insure compliance with all applicable revisions of the act... ." See Test Claim Permit Part II, pp.13-27(Findings). Because Findings are required, a proceeding to adopt or modify an NPDES permit in California is an "adjudicative proceeding." 23 Cal. Code Reg. 648(a).

In contrast, adoption of a TMDL is a rule making proceeding. 23 Cal. Code Reg. 649(a) ("Rule making proceedings shall include any hearings designed for the adoption, amendment or repeal of any rule, regulation or standard of general application, which implements, interprets or makes specific any statute enforced, or administered by the State and Regional Boards.")

Rights accorded to a permittee in an adjudicative proceeding are not provided to the permittee in a rule making proceeding. Whereas Chapter 4.5 of the Administrative Procedure Act (commencing with Government Code Section 11400), Evidence Code Sections 801-805, and Government Code Section 11513 apply in State and Regional Board adjudicative proceedings, these rights are not present in a rule making proceeding. Compare 23 Cal. Code Reg. 648(b) with 23 Cal. Code Reg. 649.1. Thus, whereas a permittee in an adjudicative proceeding would have the right to call and examine witnesses, introduce exhibits, and cross examine opposing witnesses, Government Code Section 11513(b), as well as certain other rights to assure the fairness of the proceeding, Government Code Section 11425.10, these rights are not available in a TMDL rule making proceeding. See 23 Cal. Code Reg. 649.3, (providing only for "presentation of comments or evidence by interested persons").

Therefore, as matter of law the hearing on the adoption of the TMDL, as a rule making proceeding, is not equivalent to a permit modification hearing, which is an adjudicative proceeding. The Draft Proposed Decision errs as a matter of law when it so finds (DPD at 110-111).

Quite simply, the procedures and criteria considered at a TMDL hearing are different than the procedures and criteria considered to modify an NPDES permit. There is no evidence and the Regional Board does not and did not entertain evidence as to whether a TMDL meets the maximum extent practical or other standards. There is no

evidence in the record that such standards were considered at any TMDL adoption hearing.

2. It is an Error of Fact to Find that Part 3.C of the 2001 Permit Incorporated the TMDLs into the 2001 Permit

The Draft Proposed Decision also errs when it concludes that the SQMP created under 2001 Permit included TMDL provisions. **There is no evidence in the record that the plan included such provisions.** Quite simply, this is because the plan did not. There is no evidence that the stormwater quality management plan was ever amended to reflect the adoption of the TMDLs.

Indeed, the conduct of the Regional Board proves this point. When the Regional Board wanted to enforce the TMDLs, it amended the permit and complied with notice and hearing requirements. To incorporate the first portion of the Trash TMDL and the dry weather portion of the Marina del Rey Bacteria TMDL, the Regional Board formally noticed a hearing and formally amended the permit to include those provisions. See DPD at 96 (“On December 10, 2009, the Regional Board adopted Order No. R4-2009-0130 to amend Order 01-182 to incorporate the provisions of the Los Angeles River Trash TMDL”); DPD at 103 (“On August 9, 2007, the prior permit (Order 01-182) was amended by Order R4-2007-0042 to expressly incorporate the [the Marina Del Rey Dry Weather Bacteria TMDL.]”) There would have been no need for the Regional Board to hold those hearings and expressly amend the 2001 Permit if these TMDLs would have been otherwise automatically been incorporated in the stormwater quality management plan. The Regional Board itself recognized that it must hold a hearing in order to incorporate the provisions of a TMDL into a permit.

Because the TMDLs could not lawfully be incorporated into the 2001 permit through the mechanism of Part III.C, and were not in fact so incorporated, Claimants were not required to comply with them under the 2001 permit. The TMDLs were new under the test claim permit.³

3. It is an Error of Law to Compare the TMDLs in the Test Claim Permit to Parts 2.1 and 2.2 of the 2001 Permit

The Draft Proposed Decision also finds that the TMDLs are not a new program on the grounds that the 2001 Permit contained receiving water limitations and discharge prohibitions that, according to the Commission, essentially required permittees to limit their discharge consistent with what became TMDL WLAs. See DPD at 112-113, 120. Those receiving water limitations and discharge prohibitions were set forth in 2001 Permit

³ To the extent that any Claimant prepared a plan to implement the TMDLs, or otherwise commenced their implementation prior to the test claim permit, such action was voluntary. As set forth in Government Code Section 17565, if a local agency at its option “has been incurring costs which are subsequently mandated by the State, the State shall reimburse the local agency. . . for those costs incurred after the operative date of the mandate.” That is the case here with respect to any TMDL implementation prior to their inclusion in the test claim permit.

Part 2.1, which stated that “Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited,” and Part 2.2, which stated, “Discharges from the MS4 of storm water, or non-stormwater, for which a Permittee is responsible for, shall not cause or contribute to the a condition of nuisance.” See DPD at 116-117. According to the Draft Proposed Decision, “the only difference between the prior permit and the test claim permit is that the test claim permit now identifies the waste load allocations for the pollutant calculated in the TMDLs so the Claimants know the percentage of pollutant loads that need to be reduced to meet the existing water quality standards in the effective water bodies.” DPD at 120.

It is an error of law, however, to compare the TMDLs, or anything else in the test claim permit, with the receiving water limitations and discharge prohibitions set forth in the 2001 Permit, Parts 2.1 or 2.2, because those prohibitions have specifically been found to be unlawful under the Clean Water Act.

In *City and County of San Francisco v. Environmental Protection Agency*,⁴ the United States Supreme Court was called upon to address this very question, whether receiving water limitations that prohibited any “discharge that ‘contributes to a violation of applicable water quality standard’ for receiving waters,” and a discharge prohibition that prohibited “any discharge that ‘creates pollution, contamination or nuisance.as defined by California Water Code section 13050’” could lawfully be included in an NPDES permit. 604 U.S. 334, 343 (2025). Referring to these prohibitions as “end result” requirements that impose upon a permittee responsibility for the quality of the water in a body of water, as compared to the quality of water in a permittee’s discharge, *Id.* at 338, the Supreme Court specifically found that the Clean Water Act “does not authorize EPA to impose NPDES permit requirements that condition permit holders compliance on whether receiving waters meet applicable water quality standards.” *Id.* at 345-346.

It is therefore an error of law to compare the requirements in the test claim permit, and specifically, the TMDLs, with the receiving water limitations and discharge prohibitions in the 2001 Permit. As set forth in the fact sheet for the test claim permit, receiving water limitations have previously been included in NPDES permits pursuant to federal law. See Test Claim Permit Fact Sheet, section V.A. page F-35 (“receiving water limitations are included in all NPDES permits issued pursuant to CWA Section 402.”) It has now been determined, however, that the CWA does not authorize such “end-result” provisions.

It is therefore an abuse of discretion to compare the test claim permit requirements to a prior permit provision that is unlawful and therefore void when determining if a mandate is new. When determining whether a mandate is new, the Commission should only compare the test claim’s permit requirements with lawful requirements, not unlawful ones.

⁴ 604 U.S 334 (2025).

Accordingly, it is an error of law for the Draft Proposed Decision to compare the test claim's TMDL requirements to the 2001 Permit receiving water limitations and discharge prohibitions in determining whether the test claim permit's TMDL provisions are new or a higher level of service.

4. It is an Error of Fact to Compare the 2012 Permit TMDL Provisions with the 2001 Permit Receiving Water Limitations

It is also an error of fact to compare the test claim TMDL provisions with the 2001 Permit's receiving water limitations. As a matter of fact, the requirements are imposed on different water bodies and require different actions.

As the Supreme Court recognized in *City and County of San Francisco*, receiving water limitations focus on "end-result" requirements." 604 U.S. at 338. In other words, receiving water limitations relate to the quality of the receiving water, such as the Los Angeles, San Gabriel or Santa Clara Rivers, or the Pacific Ocean, itself.

In contrast, TMDLs and their WLAs focus on a specific permittee's discharge from its MS4, before it goes into the receiving water. Whereas the quality of receiving waters may be impacted by many different discharges and natural sources, the TMDL WLA requires the permittee to take certain actions to reduce the pollutants in its own discharge.

This difference results in the imposition of different requirements on the permittees. Whereas under the 2001 Permit the permittees only had to assure the water quality of the receiving water, the test claim permit's TMDLs required the permittees to address their own specific discharges at the location (their "outfalls") where they discharged *into* the receiving water.

In *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535 ("*San Diego Permit Appeal II*"), the court addressed a similar question. In this case the state contended that the prior permit required permittees to prohibit non-stormwater discharges and reduce the discharge of pollutants in stormwater from MS4 to the maximum extent practicable, and new permit conditions did not change that obligation. The state argued that

"a condition that did not appear in prior permits or has been updated to require additional expenditures is not new because it does not increase permittees' underlying obligation to eliminate or reduce the discharge of pollutants from their MS4s to the maximum extent practicable. Rather, the condition insures compliance with the same standard that has applied since 1990 when permittees obtained their first permit." ⁵

⁵ 85 Cal.App.5th at 559.

The Court of Appeal rejected that argument, finding that “the application of [Article XIII B] Section 6, however, does not turn on whether the underlying obligation to abate pollution remains the same.” Instead,

“to determine whether a program imposed by a permit is new, we compare the legal requirements imposed by the new permit with those in effect before the new permit became effective. [Citations] This is so even though the conditions were designed to satisfy the same standard of performance.”⁶

Thus, even if the Commission could compare the test claim permit TMDL provisions with the receiving water limitations, it would be an error to find that the TMDLs are not a new program simply because they were designed to satisfy the same standard of performance as the 2001 permit receiving water limitations and discharge prohibitions.

Accordingly, it is error for the Draft Proposed Decision to base its decision on whether the TMDLs “satisfy the same standard of performance” as the 2001 Permit’s receiving water limitations and discharge prohibitions. 85 Cal.App.5th at 559. Instead, the question is whether the legal requirements were in effect before the new permit became effective. Here, the legal requirements of the TMDLs were not in effect until incorporated into the test claim permit. The TMDLs address the quality of Claimant’s own discharges, whereas the receiving waters limitations address the quality of the water body into which the discharge occurs. This is different, even if it is designed to satisfy the same standard. *San Diego Permit Appeal II*, 85 Cal.App.5th at 559. Accordingly, the TMDL requirements are a new program or a higher level of service.

5. The Los Angeles River Trash TMDLs are a Higher Level of Service

Test Claim Permit Part VI.E.1.C. requires permittees, including Claimants, to comply with the applicable water quality-based effluent limitations or receiving water limitations contained in the attachments L through R. Test claim permit Attachment O addresses trash in the Los Angeles River. It requires permittees to comply with a final water quality-based effluent limitation of zero trash no later than September 30, 2016, and every year thereafter.

In 2009, after many hearings, the Regional Board adopted Order No. R4-2009-0130, which amended the 2001 Permit to incorporate the provisions of the Los Angeles River Trash TMDL. At the end of the 2001 Permit, that amendment required a reduction of trash to 30% of the baseline load calculated as a rolling 3-year annual average. The test claim permit then required Claimants to further reduce the discharge of trash, requiring zero trash discharge to the Los Angeles River no later than September 30, 2016 and every year thereafter.

⁶ *Id.*

The Draft Proposed Decision finds that the post-2012 Los Angeles River trash provisions were neither new nor a higher level of service. DPD at 100. According to the Draft Proposed Decision, the requirements were not a higher level of service because the requirement to reach zero was included in the TMDL when it was amended into the 2001 Permit, even though that requirement did not apply until after the 2001 Permit's termination.

The Draft Proposed Decision errs by not recognizing the post-2012 trash reduction as a higher level of service. A "higher level of service" exists where the mandate results in an increase in the actual level or quality of governmental services provided. *San Diego Unified School District*, 33 Cal. 4th at 877. This determination is made by comparing the mandate with pre-existing requirements. *Id.* at 878.

Comparing the trash TMDLs requirements under the test claim permit with the requirements under the 2001 permit demonstrates that the test claim permit does provide a higher level of service, both because trash discharge was reduced and because the Regional Board chose, as a matter of discretion, to require that reduction even though the Regional Board was not required to do so.

First, it is undisputed that, under the 2001 Permit, Claimants were required to reduce trash only by 30%. Claimants were not legally obligated to reduce trash to zero. It was not until adoption of the test claim permit that Claimants were legally obligated to reduce trash to zero. An increase in reduction of trash from 30% to 100% is clearly an increase in the actual level of governmental services provided.

Second, the Regional Board was not federally obligated to continue to include the trash TMDLs provisions, as MS4 permits are not federally required to meet water quality standards. See Section II.C, above. The Regional Board could therefore have ceased the trash obligations at 30% in 2012. Instead, the Regional Board chose, as a matter of discretion, to mandate further reduction of trash to zero. This choice mandated a higher level of service. The Draft Proposed Decision errs in finding otherwise.

E. The Development of a Watershed Management Program (WMP) or an Enhanced Watershed Management Program (EWMP) to Comply with Regional Board Adopted TMDLs was Practically Compelled and Thus Constituted a State Mandate

The Draft Proposed Decision concludes that the development of a WMP or an EWMP to comply with Regional Board-adopted TMDL WLAs and receiving water limitations was voluntary, and therefore not mandated by the state because Claimants were given a choice between immediate compliance with receiving water limitations, i.e. water quality standards, or development of a WMP or EWMP. DPD at 121, 125.

This finding is also error. Although the development of a WMP or EWMP was not legally compelled, it was practically compelled, and thus still constitutes a mandate.

Legal compulsion exists “when the local entity has a mandatory, legally enforceable duty to obey.” *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal. 5th 800, 816.

In addition to legal compulsion, however, there can also be “practical compulsion.” Practical compulsion exists where the effect of noncompliance is so draconian that the local agency is essentially left “without discretion” not to comply. *Id.*; See also *San Diego Permit Appeal II*, 85 Cal.App.5th at 558. The courts have held that practical compulsion is a basis for a state mandate when a local government faces certain and severe penalties or other draconian consequences for not complying with a technically optional program, leaving the local government entity no real choice. *Coast Community College Dist. v. Commission on State Mandates*, 13 Cal. 5th at 817, 822. A mandate exists if a local government agency is practically compelled to comply with the mandate. *Id.* at 817, 822.

Practical compulsion exists here with respect to the development of a WMP or EWMP. Under the test claim permit, Claimants had a choice. Their discharge could either comply with receiving water limitations and water quality standards, or they could develop a WMP or EWMP.⁷

Immediate compliance with receiving water limitations, however, was not a real option. As evidenced by the need for each of the TMDLs which are developed only when the water bodies are impaired, the permittees as a practical matter, could not immediately comply with the requirement that the discharges would not cause or contribute to an exceedance of a water quality standard. Yet, if they did not develop a WMP or EWMP, they would be required to meet that standard and failure to do so would expose the Claimant to substantial daily penalties under the CWA and the Porter-Cologne Act. See 33 U.S.C. 1319(c) (criminal penalties), (d) (civil penalties) and (g) (administrative penalties); Cal. Water Code 13350(d) and (e). Thus, Claimants had no real choice but to develop and submit a WMP or EWMP to control or reduce the pollutants.

The Draft Proposed Decision in fact recognizes this practical compulsion with respect to US-EPA TMDL requirements. The same rule applies with respect to compliance with the test claim permits receiving water limitations which require compliance with water quality standards. As evidenced by the TMDLs, compliance with those receiving water limitations was not possible upon the adoption of the permit. Claimants thus had no practical real choice, but to develop WMPs or EWMPs. Otherwise, they would have been subject to substantial penalties under the Clean Water Act and California Water Code.

⁷ The test claim permit specifically provides that “[i]f a permittee does not submit a WMP, or the plan is determined to be inadequate by the Regional Board Executive Officer and the Permittee does not make the necessary revisions within 90 days of written notification, that plan is inadequate, the Permittee shall be required to demonstrate compliance with the numeric WLAs immediately based on monitoring data collected under the [monitoring and reporting program] . . .” Exhibit A, Test Claim 13-TC-01 at 747.

F. The U.S. EPA Adopted TMDLs in the Test Claim Permit Are a New Program or Higher Level of Service

The test claim permit requires compliance with seven U.S. EPA adopted TMDLs (DPD at 132-133). The Draft Proposed Decision finds that the requirement to develop an WMP or EWMP to achieve the WLAs contained in each U.S. EPA adopted TMDL does impose a state-mandated new program or higher level of service (DPD at 133-140), but actual implementation of the plan is not a new program or higher level of service (DPD at 140-142.)

1. The Requirement to Develop and Submit a WMP or EWMP to achieve the U.S. EPA TMDL WLAs is a New Program or Higher Level of Service

Claimants agree with the Draft Proposed Decision's finding that the requirements to develop and submit a WMP or EWMP to achieve the WLAs contained in each U.S. EPA TMDL is a new program or higher level of service. As the Draft Proposed Decision finds, this is a new requirement that was practically compelled. Claimants had no real choice but to develop and submit a WMP or EWMP. DPD at 135-136.

2. The Draft Proposed Decision Errs When it Finds that Implementation of the WMP or EWMP was Not a New Program or Higher Level of Service

Notwithstanding the finding that the preparation of the WMP or EWMP is a new program or higher level of service, the Draft Proposed Decision finds that the actual implementation of those programs is not a new program or higher level of service. The Draft Proposed Decision bases its conclusion on Part 2 of the prior permit, which prohibited discharges that caused or contributed to a violation of water quality standards and Part 3.B of the prior permit which required the stormwater quality management plan to specify BMPs to assure that the MS4 shall not cause or contribute to an exceedance of water quality standards. DPD at 141-142.

As set forth above in Section II.D above, reliance on the receiving water limitations and an amendment to the stormwater quality management plan requirements of the prior permit is error as a matter of law. Receiving water limitations is an unlawful provision under the Clean Water Act. See *City and County of San Francisco*, 604 U.S. at 345-346, and the stormwater quality management plan the permit could not require incorporation by reference of new TMDL requirements without notice and an actual hearing. See Section II.D.1 and 3, above.

Moreover, as set forth above, as a matter of fact the SQMP was never amended to reflect the U.S. EPA adopted TMDLs that were adopted subsequent to the adoption of the prior permit. There is no such evidence in the record. Implementing BMPs to effectuate U.S. EPA adopted TMDLs, which were adopted subsequent to the 2001 permit, were therefore measures that were new under the test claim permit. The 2001 Permit's requirement that the SQMP specify BMPs to reduce the discharge of pollutants to the

maximum extent practicable did not include activities that would be necessary to comply with U.S. EPA TMDLs. Quite simply, those TMDLs requirements did not exist at the time of the 2001 Permit's adoption.

G. The TMDL Monitoring Requirements are a New Program or Higher Level of Service

1. The TMDL Monitoring Was Not Previously Required

Test Claim Permit Part IV.B. required Claimants to comply with the monitoring and reporting program set forth in Attachment E of the permit. Attachment E includes requirements for TMDL receiving water compliance points, TMDL monitoring requirements specified in approved TMDL monitoring plans, stormwater outfall-based monitoring including TMDL monitoring requirements, approved TMDL monitoring plans, and non-stormwater outfall-based monitoring including TMDL monitoring requirements specified in approved TMDL monitoring plans. Test Claim Permit Attachment E, Parts II.E.1-3 and Part V. Permittees could either submit their own monitoring plan or prepare an Integrated Monitoring Plan ("IMP") or Coordinated Integrated Monitoring Program ("CIMP"). Test Claim Permit, Attachment E.IV.A and B. If a Claimant elects not to develop a IMP or CIMP, it is obligated to monitor within its own jurisdiction beginning six months after the effective date of the permit. Test Claim Permit attachment E.IV.C.7.

The Draft Proposed Decision finds this monitoring not to be a new program or higher level of service because permittees could propose their own program and thus voluntary, because federal law generally requires monitoring programs, and because, even though under the 2001 Permit only the Los Angeles County Flood Control District was required to monitor, each of the Claimants was responsible for applicable discharges within its boundaries, and, if those discharges exceeded receiving water limitations, the Claimants were required to take additional action including monitoring. See DPD at 148-150.

This proposed finding is error. First, simply because Claimants could propose their own monitoring plan did not mean that the monitoring was voluntary. The test claim permit required Permittees to develop and implement a monitoring plan. The permittees could propose a program, but the location and number of monitoring points, and analysis performed, was not under the permittees control. Instead, each monitoring plan was subject to the Regional Board Executive Officer's approval. Thus, although the Claimants suggested monitoring location and analysis, it was the Regional Board's Executive Officer that mandated them.

Second the 2001 permit required only the Los Angeles Flood Control District to monitor. In contrast, the test claim permit imposed the monitoring obligation on each and all the permittees, an obligation that did not exist before.

Third, under the 2001 permit, only mass emission monitoring at 5 stations in major receiving waters, i.e. rivers or tributaries, was required. In contrast, under the test claim permit, the monitoring obligations were *in addition to* the mass submission monitoring that

the district was required to continue to perform. Additionally, this monitoring had to occur at “outfalls,” where the MS4 discharged into those rivers or other receiving waters. (Test Claim Permit, Attachment E.VII and VIII). This is a different location than the 2001 Permit’s mass emission monitoring, that took place in receiving waters, i.e., the rivers or tributaries.

The Draft Proposed Decision also finds that these monitoring obligations were not new because the TMDLs included monitoring plans. The Draft Proposed Decision errs also in basing its finding on this fact. As set forth above, TMDLs, including the TMDL monitoring plans, were not enforceable until incorporated into the permit. The TMDLs, with the exception of trash and the Marina del Rey dry-weather bacteria, were not incorporated into the prior permit. Instead, they were imposed upon Claimants only with the test claim permit’s adoption.

As stated above, a mandate is “new” if the local government had not previously been required to institute it. *County of Los Angeles* 110 Cal.App.4th at 1189. This determination is made by comparing the mandate with pre-existing requirements. Here, TMDL monitoring requirements were new. They were first imposed upon Claimants by the test claim permit; they were not enforceable against claimants prior to this time.

2. The TMDL Monitoring is Not Required by Federal Law Because the TMDLs Themselves are Not Required by Federal Law

The Draft Proposed Decision also finds that the TMDL monitoring provisions are required by federal law. Although it is correct that federal law requires monitoring, it is not correct that federal law requires TMDL monitoring in MS4 permits. As set forth above, TMDLs are adopted in order to implement water quality standards. MS4 permits, however, are not required to contain provisions to meet water quality standards. *Defenders*, 191 F.3d at 1164-1165.

Accordingly, because the test claim permit is not required to contain provisions to meet water quality standards, the TMDLs provisions are included only as a matter of discretion. Because the Regional Board was not required to include the TMDL provisions into the MS4 test claim permit, it was not required to include the monitoring provisions associated with them.

The Draft Proposed Decision also errs in finding that the TMDL monitoring was not new because the 2001 permit provided that the SQMP should be modified to include any required additional monitoring to comply with Regional Board-adopted TMDLs once they became effective. For the reasons set forth in Sections II.D.1 and 2 above, incorporation by reference of monitoring requirements without an amendment to the 2001 Permit itself, accomplished at an adjudicative hearing with notice and an opportunity to be heard, was unlawful and thus ineffective.

3. Even if the TMDL Monitoring was Not a New Program, It Was a Higher Level of Service

Claimants are entitled to subvention of fund for a “new program or higher level of service.” A “higher level of service” exists where the mandate results in an increase in the actual level or quality of governmental services provided. *San Diego Unified School District*, 33 Cal. 4th at 877. This determination is made by comparing the mandate with pre-existing requirements.

Again, as discussed above, the test claim permit contained several new requirements. Whereas under the 2001 Permit only the Los Angeles County Flood Control District was required to monitor, under the test claim permit monitoring was specifically imposed on all Claimants. Whereas previously only mass emission monitoring was required, now TMDL, outfall, and non-stormwater discharge monitoring was required.

This additional monitoring resulted in an increase in the actual level or quality of government services provided. More data was created in order to support the MS4 program. This was not just an increase in costs, but an actual increase in services and data generated. Accordingly, even if it could be argued that the TMDL outfall, non-stormwater discharge monitoring was not new, it was an increase in the actual level or quality of the governmental services provided.

III. REQUIREMENTS RELATED TO DISCHARGE PROHIBITIONS FOR NON-STORMWATER

Part III.A.1 of the test claim permit requires the permittees, including Claimants, to prohibit certain non-stormwater discharges through the MS4 to receiving waters. For non-exempt, non-stormwater flows, the permittees, including Claimants, are required to develop and implement various procedures relating to such flows.

Claimants can prepare a WMP or EWMP that would incorporate provisions regarding non-stormwater discharges. However, the test claim permit requires that any such WMP or EWMP must include “strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants consistent with Parts III.A . . .” Part VI.C.5.b(iv)(2). Thus, the provisions of Part III.A discussed below represent state-mandated requirements for new programs or higher levels of service that may, in whole or in part, be part of a WMP or EWMP.

These requirements either exceed the requirements of the CWA and federal stormwater regulations or specify the means of compliance with the Act and the regulations, and consequently are state mandates.

A. Mandate Requirements in the Test Claim Permit

Test Claim Permit Parts III.A.2 and VI.D.9.f, relating to conditional exemptions from the non-stormwater discharge prohibition, require Claimants to assure that appropriate

BMPs are employed for discharges from essential non-emergency firefighting activities and, with regard to unpermitted discharges by drinking water suppliers, to work with those suppliers on the conditions of their discharges.

Part III.A.4.a requires Claimants to “develop and implement procedures” to require non- stormwater dischargers to fulfill requirements set forth in Part III.A.4.a.i-vi.

Part III.A.4.b requires Claimants to “develop and implement procedures that minimize the discharge of landscape irrigation water into the MS4 by promoting water conservation programs.” Permittees are required to coordinate with local water purveyors, where applicable, to promote landscape water use efficiency requirements, use of drought tolerant native vegetation, and the use of less toxic options for pest control and landscape management. Permittees are required to develop and implement a “coordinated outreach and education program” to minimize the discharge of irrigation water and pollutants associated with such discharge as part of the Public Information and Participation in Part VI.D.4.c of the Permit.

Part III.A.4.c requires Claimants to evaluate monitoring data collected pursuant to the Monitoring and Reporting Program of the Permit (Attachment E) and “any other associated data or information” to determine if any authorized or conditionally exempt non-stormwater discharges identified in Permit Parts III.A.1, A.2 and A.3 are a source of pollutants that may be causing or contributing to an exceedance of a receiving water limitation in Part V or water quality-based effluent limitation in Part VI.E.

Part III.A.4.d requires that, if this data shows that the non-stormwater discharges are a source of pollutants, Claimants are required to take further action to determine whether the discharge is causing or contributing to exceedances of receiving water limitations, report those findings to the Regional Board, and take steps to effectively prohibit, condition, require diversion or require treatment of the discharge.

B. The Permit Requirements are New Programs or Higher Levels of Service

The Permit requirements set forth above are new programs or higher levels of service that had not been imposed on Claimants before. This can be seen by a comparison of these activities to the 2001 Permit.

The 2001 Permit required that permittees “effectively prohibit non-storm water discharges into the MS4 and watercourses” unless the non-stormwater discharge fell into one of several categories. 2001 Permit Part 1.A. The Regional Board reserved to itself the obligation to add or remove categories of exempt non-stormwater discharges (2001 Permit, page 24).

The 2001 Permit did not require the permittees to:

(a) police, through the establishment of procedures and standards, the categories of the “conditionally exempt” discharges to the MS4;

(b) assure that appropriate BMPs were employed for discharges from essential non-emergency firefighting activities or drinking water supply systems;

(c) implement procedures that minimized the discharge of landscape irrigation water into the MS4 or to coordinate with local water purveyors to promote landscape water use efficiency requirements;

(d) evaluate monitoring data to determine if any authorized or conditionally exempt non-stormwater discharges were a source of pollutants that may be causing or contributing to an exceedance of a receiving water limitation. (This previously was an obligation of the Regional Board); and

(e) “develop and implement procedures” to require non-stormwater dischargers to fulfill requirements set forth in Part III.A.4.a(i-vi).

The above-described requirements of the Permit are therefore new programs or higher levels of service. *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859, 877-878; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1189.

C. The Permit Requirements are State Mandates

The CWA requires MS4 NPDES permits to “include a requirement to effectively prohibit non-stormwater discharges into the storm sewers.” 33 U.S.C. § 1342(p)(3)(B)(ii). The federal CWA regulations, in 40 C.F.R. § 122.26(d)(2)(iv)(B)(1):

(1) do not require a municipality to address certain specified categories of non-stormwater discharges into the MS4 unless the municipality determines that such discharges are sources of pollutants to “waters of the United States”;

(2) do not require a municipality *to affirmatively evaluate* those discharges to determine if they are such a source of pollutants, as required by Section III.A.4.c of the Permit; and

(3) refer to the discharges as sources of pollutants to “waters of the United States,” not to MS4 systems.

Here, the non-stormwater test claim permit requirements go beyond the requirements set forth in the federal CWA regulations, which do not mandate these particular implementing requirements. Nor do the federal regulations require the test claim permit’s non-stormwater requirement’s scope and detail. Instead, these requirements are imposed as a matter of discretion. As such, these requirements are not federal mandates. See *Dept. of Finance*, 1 Cal. 5th at 765, 771.

Additionally, by specifying the steps to be taken by the Claimants with regard to the evaluation of non-stormwater discharges, including the development and implementation of procedures, the evaluation of monitoring data, reporting to the Regional Board and coordination with local water purveyors and other requirements, the Regional

Board in the test claim permit exercised its discretion to specify the means of compliance with the non-stormwater discharge requirements. *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172-73. Thus, even if these requirements were federal in origin, the Regional Board's specification of compliance, an exercise of discretion that usurped the Claimants' ability to design their own program, rendered these permit provisions state mandates. *Id.*; *Dept. of Finance*, 1 Cal. 5th at 771.

Finally, to the extent that these requirements were previously performed by the Regional Board, such as its statutory responsibility to evaluate monitoring data to determine if any authorized or conditionally exempt non-stormwater discharges were a source of pollutants that may be causing or contributing to an exceedance of a receiving water limitation, the Regional Board in the Permit freely chose to impose these requirements on permittees rather than perform them itself. As such, a state mandate was imposed. *Id.*; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-94.

D. The Draft Proposed Decision Errs in Finding These Non-Stormwater Discharge Provisions are Not New Programs or Higher Levels of Service

The Draft Proposed Decision first finds that the non-stormwater discharge requirements relating to conditionally exempt discharges are not mandated because Claimants have the "option" of developing their own conditions either within their jurisdiction or with other co-permittees, presumably in the Watershed Management Program. DPD at 173-174.

This finding is error. Claimants can prepare a WMP or EWMP that would incorporate provisions regarding non-stormwater discharges. However, the test claim permit requires that any such WMP or EWMP, or other provisions, must include "strategies, control measures, and/or BMPs that must be implemented to effectively eliminate the source of pollutants consistent with Parts III.A. . . ." Test Claim Permit VI.C.5.b.iv(2).

Second, by specifying the steps to be taken by the Claimants with regard to the evaluation of non-stormwater discharges, including the development and implementation of procedures, the evaluation of monitoring data, reporting to the Regional Board in coordination with local water purveyors and other requirements, the Regional Board in the test claim permit has exercised its discretion to specify the means in compliance with non-stormwater discharge requirements and usurped the Claimants' ability to design their own program. *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172-73.

Thus, Claimants did not have the option of ignoring the provisions set forth in Part III.A. Claimants could develop their own procedures in addition to those set forth in Part III.A., but they had to have a program that addressed the items in Part III.A. The permit's specification of what must be included in the non-stormwater program constituted an exercise a discretion by the Regional Board that usurped Claimants' ability to design their

own program, rendering these non-stormwater permit provisions state mandates. *Long Beach Unified School District*, 225 Cal.App.3d at 172-73; *Department of Finance*, 1 Cal. 5th at 771.

The Draft Proposed Decision's finding that most of the specific activities required by Parts III.A.2 and III.A.4 were required by the prior permit is also error. DPD at 174. Although some of the provisions of the test claim permit were included in the prior permit, as the Draft Proposed Decision notes the test claim permit did add non-emergency fire-fighting activity as a conditionally exempt non-stormwater discharge. DPD at 175.

In this regard, the Draft Proposed Decision finds that the conditions placed on non-emergency fire-fighting activity discharges and drinking water suppliers were similar to what was placed on non-stormwater dischargers generally under the prior permit. DPD at 175-176. That finding, however, misses the point. It is not that the non-stormwater discharges under the test claim permit are similar to those under the 2001 permit, but that under the test claim permit, *Claimants for the first time are responsible for policing the activities of the non-stormwater discharge*. Test claim permit Part III.A.4. requires Claimants to develop and implement procedures to insure that the non-stormwater discharger fulfills certain obligations, including notifying the claimant of the planned discharge, obtaining local permits, providing documentation that it has obtained any other necessary permits, monitors the discharge, implements BMPs and/or control measures as specified in Table VIII of the test claim permit and maintains records of the discharge.

These activities required of Claimants are new. They were not present in the prior permit.

The Draft Proposed Decision makes the same error with respect to Test Claim Permit Part III.A.4.b. which required Claimants to develop and implement procedures to minimize the discharge of landscape irrigation. DPD at 178. The Draft Proposed Decision errs when it finds that this requirement was not new simply because the 2001 Permit required educational activities within its jurisdiction. In contrast, the test claim permit here specifically requires Claimants to address this landscape irrigation.

Again, the Regional Board here exercised its discretion in the test claim permit to specify the means of compliance with the non-stormwater discharge requirements. By doing so, the Regional Board usurped the Claimants' ability to design their own program, rendering this permit provision a mandate. *Long Beach Unified School District*, 225 Cal.App.3d 172-173, 1 Cal. 5th at 771. It is new, because it is a specific legal requirement that did not specifically exist under the 2001 permit. *County of Los Angeles v. Commission on State Mandates*, 110 Cal.App.4th at 1189. As the Court of Appeals found in *Department of Finance v. Commission (San Diego Permit Appeal II)* even though this provision related to a same pollution prevention standard, i.e., the prohibition of non-stormwater discharge, by specifying that there must be a program to minimize landscape irrigation, the Regional Board imposed a mandate. 85 Cal.App.5th at 559.

IV. THE MINIMUM CONTROL MEASURES AND NEW PROGRAMS ARE A HIGHER LEVEL OR SERVICE (Test Claim Permit Parts VI.D.4-VI.D.10.)

The test claim permit contains several requirements designated as “Stormwater Management Program Minimum Control Measures.” Test Claim Permit Parts VI.D.4-10. See DPD 179-180. These include a:

- (a) Public Information and Participation Program;
- (b) Industrial/Commercial Facilities Program;
- (c) Planning and Development Program;
- (d) Development Construction Program;
- (e) Public Agency Activities Program; and
- (f) Illicit Connections and illicit Discharges Elimination Program.

Id.

The Draft Proposed Decision finds that many of these minimum control measures are not mandated new programs or higher levels of service. This finding is error.

A. Implementation of the Minimum Control Measures is Not Voluntary and are State Mandates

First, as a general matter, the Draft Proposed Decision finds that Parts VI.D.4. (requirements applicable to the Los Angeles County Flood Control District), VI.D.5. (Public Information and Participation Program, VI.D.6 (industrial/commercial facilities program and VI.D.8. to VI.D.10 (development construction program, public agencies activities program and illicit connections and illicit discharges elimination program) do not constitute a state-mandated new program or higher level of service because, according to the Draft Proposed Decision, Claimants and other permittees can address these programs in the watershed management program, which the Draft Proposed Decision finds is voluntary. DPD at 187. According to the Draft Proposed Decision, permittees can eliminate a control measure if the permittee voluntarily decides to develop and implement a WMP. DPD at 188.

The finding that the development of a WMP or EWMP is voluntary, however, is incorrect. As set forth in Section II.E above, the preparation of a WMP is practically compelled, and therefore is a mandate. Claimants must either implement an improved WMP or EWMP or immediately comply with receiving water limitations, i.e., water quality standards. Because, as evidenced by the TMDLs, it is impossible for Claimants’ discharges to immediately comply with receiving water limitations and water quality standards for all of the TMDLs that have been adopted, Claimants have no choice but to prepare a WMP or EWMP.

Accordingly, preparation of a WMP is not voluntary, but practically compelled. The contents the Draft Proposed Decision errs in finding that the preparation of the WMP is voluntary. See DPD at 188.

The Draft Proposed Decision also errs when it finds that these minimum control measures are required by federal law. 40 C.F.R. Section 122.26(d)(2)(iv) requires Claimants to have a stormwater management program. The program shall include, inter alia, a description of a planning process to reduce the discharge of pollutants from commercial and residential areas, including new and significant redevelopment; to address illicit discharges; to address discharges from municipal landfills; and program to reduce pollutant discharges from construction sites. 40 C.F.R. Section 122.26(d)(2)(iv)(A)-(D).

This federal regulation does not, however, designate the specific activities which must be undertaken to address these areas. For example, the test claim permit's public information and participation program specifically requires each Claimant to provide a means for public reporting of clogged catch basin inlets and illicit discharges, requires a residential outreach program including public service announcements, public information materials and distribution of stormwater pollution prevention materials at points of purchase; maintaining stormwater websites; providing independent parochial and public schools with materials, and making the public information materials to educate and involve various ethnic communities. Test Claim Permit Section VI.D.5.c. and d. These specific requirements are not found in the federal regulations.

The Watershed Management Program, however, must contain these requirements. Test Claim Permit VI.C.1.g.i. specifically provides that the Watershed Management Program must be "consistent" with Parts VI.C.1.a-f and VI.C.5-8. Contrary to the proposed finding in the Draft Proposed Decision, DPD at 188, Claimants are constrained with respect to implementation of these minimum measures. The test claim permit requires these measures to be included or otherwise addressed.

Thus, even if Claimants prepare a watershed management program, they still must implement certain minimum control measures, such as these public information requirements. The requirements are not voluntary because the program still must be consistent with the minimum control measures. Because the Regional Board exercised its discretion to specify these means of compliance, these requirements are mandates. *Long Beach Unified School District*, 225 Cal.App.3d at 172-173; *Department of Finance*, 1 Cal. 5th at 771.

B. The Illicit Discharge Elimination Program Is A New Program or Higher Level of Service

The Draft Proposed Decision recognizes that the test claim permit requires the Los Angeles County Flood Control District and the remaining permittees, including Claimants, to have an illicit discharge elimination program. This includes (1) signage on open channels regarding dumping prohibitions and public reporting; (2) written procedures to document complaint calls and subsequent evaluation of those procedures; (3)

documentation of complaint calls and internet submissions; (4) an illicit discharge and spill response plan to respond to sewage and other spills within 4 hours of becoming aware of the illicit discharge spill; and (5) reporting discharges and spills to the appropriate public health agencies and office of emergency services. Test Claim Permit Parts VI.D.4.D.d. and VI.D.10.; See DPD 189-190.

The Draft Proposed Decision errs when it finds that these provisions were not new or higher level of service. The Draft Proposed Decision notes that the prior permit required an illicit discharge program, including posting signs discouraging illegal dumping, but does not address the fact that each of the requirements identified by the Draft Proposed Decision on pages 189-190 were in fact not required by the 2001 Permit. Indeed, the Draft Proposed Decision concedes that the test claim permit required a shorter response time (4 hours, as opposed to 1 business day) to reports of suspected illicit discharges. DPD at 191.

These provisions are new. As a matter of fact, they are legal requirements not imposed by the 2001 Permit. A mandate is “new” if the local government had not previously been required to institute it. *County of Los Angeles v. Commission on State Mandates*, 110 Cal.App.4th at 1189. That is the circumstance here.

Certainly, if not new, these requirements constitute a “higher level of service.” A “higher level of service” exists where the requirements result in an increase in the actual level of quality of government services provided. *San Diego Unified School District v. Commission on State Mandates*, 33 Cal. 4th at 877. The increased postings, increased procedures for receiving and evaluating complaint calls, and increased response time all are an increase in the actual level of quality of governmental services provided.

The Draft Proposed Decision errs when it finds that these Illicit Discharge requirements are not a new program or higher level of service.

C. The Public Agency Requirements are A New Program or Higher Level of Service

Part VI.D.9. of the test claim permit requires permittees, including Claimants, to undertake numerous tasks with respect to their properties and operations, including an inventory of facilities, an inventory of existing development for retrofitting opportunities, development and implementation of an Integrated Pest Management Program, installation of trash excluders or equivalent devices or other steps in areas not covered by a Trash TMDL, and training of permittee employees and contractors in the use of pesticides and fertilizers. See DPD at 191-194.

Similar to other minimum control measures, the Draft Proposed Decision finds that these requirements are not state mandates because permittees can choose to comply with these requirements or implement their own plan through a WMP or EWMP. DPD at 194.

Again, this position is error. First, as discussed above, the preparation of a WMP

or EWMP is not truly voluntary. Instead, it is practically compelled.

Second, a WMP or EWMP must still assess the requirements in Parts VI.D.9. and incorporate or customize all control measures set forth therein, unless their elimination is justified by a Claimant as not applicable (Part VI.C.5.b.iv.(1).) Thus, a Claimant has to implement the activities required by the permit's public agency activities. The permit requires Claimants to implement those activities, whether through a WMP, EWMP, or otherwise. Because the Regional Board has exercised its discretion to specify these requirements, the Regional Board has usurped the Claimants' ability to design their program and has adopted these permit provisions as state mandates. *Long Beach Unified School District*, 225 Cal.App.3d at 172-173; *Department of Finance*, 1 Cal. 5th at 771.

The Draft Proposed Decision also finds that these requirements are not new. DPD at 194. However, as a matter of fact, the 2001 permit did not impose these specific requirements. The 2001 Permit contained no requirements for permittees to inventory their facilities or to inventory areas of existing development for retrofitting. The 2001 Permit contained no requirements with respect to development and implementation of an IMP program or for the training of employees or contractors with respect to such program.

The 2001 Permit did contain a requirement that municipalities not covered by a Trash TMDL must place that trash receptacles at transit stops and take other trash mitigation efforts. The trash receptacle requirement was determined to be a state mandate by the Commission and this finding was affirmed by the California Supreme Court. See, e.g. *Department of Finance*, 1 Cal. 5th at 365, 372. This obligation terminated with the termination of the 2001 Permit, but it is error for the Commission to find that a prior state mandate is a basis for finding a test claim permit requirement that replaces that mandate to be not new. Instead, it is a continuation of an obligation already found to be a state mandate.

Finally, the 2001 Permit did not contain a requirement for trash excluders or other equivalent BMPs.

D. The Public Information and Participation Program (PIPP) Requirements Are New or a Higher Level of Service

Part VI.D.5. requires the permittees, including Claimants, to undertake specific Public Information and Participation Program ("PIPP") activities, including either individually or as a part of a county-wide or watershed group sponsored PIPP. See DPD at 195-197.

The Draft Proposed Decision finds that the PIPP requirements are not mandates because Claimants can either comply with these requirements or implement their own program consistent with federal law. DPD at 197. The Draft Proposed Decision also finds that the requirements are not new because the 2001 Permit imposed other PIPP requirements.

Similar to the finding with respect to the public agency activities, this proposed finding is error. Again, preparation of a WMP or EWMP is not voluntary, but is practically compelled. Moreover, the WMP or EWMP must still address the requirements set forth in the test claim permit, Part VI.D.5, and incorporate or customize all control measures set forth therein, unless their elimination is justified by a Claimant is not applicable. Part VI.C.5.b.iv(1)(c).

The Draft Proposed Decision attempts to justify the finding that the PIPP requirements are not new on the grounds that there is only “slight wording differences” between the 2001 permit and the test claim permit. The 2001 Permit, however, contained no requirements for permittees other than the Los Angeles County Flood Control District to undertake these PIPP obligations. These PIPP obligations are new for every claimant other than Los Angeles County Flood Control District. They are also new for Los Angeles County Flood Control District as these specific requirement were not required before.

Finally, the educational activities relating to the application of pesticides, herbicides and fertilizer are new or a higher level of service. Although 40 CFR Section 122.26(d)(2)(iv)(6) requires that a permittee’s management program include a “description of a program to reduce to the maximum extent practicable, pollutants in discharges from MS4s associated with the application of pesticides, herbicides, and fertilizer,” the federal regulation provides that those educational activities are to be directed at “*commercial applicators and distributors.*”

The requirements in Part VI.D.5 are not so limited. They apply and are to be directed to the general population, not solely to commercial applicators and distributors of pesticides, herbicides and fertilizer. Given how the scope of this program is broader than the federal regulation, it is a new program. Certainly, it is a higher level of service that that what was required under the 2001 Permit.

E. Inventory and Inspections of Industrial/Commercial Sources

Test Claim Permit Part VI.D.6.b. requires permittees to track various “critical” industrial and commercial sources, including the creation and updating of an electronic database containing information regarding such sources. Part VI.D.6.d. and e. require inspections of commercial and industrial facilities.

The Draft Proposed Decision finds that “most of the requirements” in Part VI.D.6. of the test claim permit are not new. DPD at 200.

As a matter of fact, however, the requirement to create an electronic database to track critical industrial and commercial sources is new. The 2001 Permit did not require any electronic database.

Indeed, the obligation to inspect industrial and commercial sites has been found to be a state mandate. *Dept. of Finance*, 1 Cal. 5th at 770. Given that the inspections have

been found to be state mandates, it is error to find that they are not new simply because they are continued in a new permit.

The question of fee authority is addressed in Section V, below.

F. Development Construction Program

Part VI.D.8 of the Permit requires Claimants to follow requirements applicable to construction sites, including inspection of construction sites of one acre or more in size, creation of a construction site inventory and electronic tracking system, the development of technical standards for Erosion and Sediment Control Plans (“ESCP”) and review of those plans, the development of procedures to review and approve construction site plan documents, and the training of permittee employees. See DPD at 200-204.

The Draft Proposed Decision finds that requiring the permittees to have an electronic inventory and tracking system for all projects is new and that the number of required inspections has increased. The test claim permit also contains more specificity. DPD at 206. Claimants agree with this finding.

The Draft Proposed Decision, however, finds that these requirements are not mandated by the state. The Draft Proposed Decision bases its finding on the fact that Claimants can implement their own WMP or EWMP consistent with federal law. Like industrial and commercial inspections, however, such a WMP or EWMP must still address the requirements of Part VI.D.8. and incorporate all control measures set forth therein, unless their elimination is justified by the permittees is not applicable. Test Claim Permit Part VI.C.5.b.(iv)(1)(c). Thus, the test claim permit does usurp Claimants’ discretion and does specify what activities must be performed. Because the test claim permit specifies these requirements, the program must address them, even if customized. Because the Regional Board has required that requirements be addressed in one manner or another, these provisions are specified, state mandates.) *Long Beach Unified School Dist.*, 225 Cal.App.3d at 172-173; *Dept. of Finance*, 1 Cal. 5th at 771.

The Draft Proposed Decision also finds that Claimants have fee authority sufficient to cover these costs. That fee authority will be addressed in Section V, below.

G. Requirements Relating to Post-Construction BMPs

Part VI.D.7.d. and Attachment E Part X set forth requirements relating to tracking and inspecting post-construction BMPs for new development and re-development. The Draft Proposed Decision finds that many of these activities are new and mandated by the state. See DPD at 212-215.

The Claimants agree with this position.

V. CLAIMANTS' ABILITY TO IMPOSE PROPERTY-RELATED OR REGULATORY FEES ON TEST CLAIM PERMIT ACTIVITIES IS MORE LIMITED THAN CONCLUDED BY THE DRAFT PROPOSED DECISION; IN PARTICULAR, THE COMMISSION SHOULD NOT RELY ON SB 231 BECAUSE IT CONFLICTS WITH ARTICLE XIII D, SECTION 6 OF THE CALIFORNIA CONSTITUTION (DRAFT PROPOSED DECISION, SECTION IV.E)

This section of Claimants' comments addresses Draft Proposed Decision Section IV.E., concerning the ability of Claimants to obtain funding for state-mandated new programs or higher levels of service. As detailed below, Claimants agree with some of the analysis in Section IV.E. and take issue with other portions. While the overall focus of Section IV.E is on "regulatory fees," these comments also address in detail comments made on property-related fees.

A. The Record Supports the Draft Proposed Decision's Conclusion that Claimants Incurred Increased Costs Exceeding \$1,000 and Used Local "Proceeds of Taxes" to Comply with New State-Mandated Activities

Claimants agree with the conclusion in Draft Proposed Decision Section IV.E.1 that they incurred increased costs exceeding \$1,000 and used "proceeds of taxes" in the funding of new state-mandated new programs or higher levels of service mandated by the test claim permit. This conclusion is consistent with the record before the Commission, as the Draft Proposed Decision finds.⁸ Thus, under Cal. Const. art. XIII B, section 6, a subvention of funds is required, absent other factors, such as offsetting fee revenue.

However, the Draft Proposed Decision concludes in Section IV.E.2 that a subvention of funds is not available to Claimants after January 1, 2018, based on the effective date of Senate Bill 231 ("SB 231"), which amended Govt. Code §§ 53750 and 53751 to overrule *Howard Jarvis Taxpayers' Ass'n v. City of Salinas* ("*City of Salinas*").⁹ *City of Salinas* held that an exemption from the majority taxpayer vote requirement for property-related fees for "sewer services" in article XIII D, section 6(c) of the California Constitution did not cover storm sewers or storm drainage fees.¹⁰ SB 231 purported to "correct" that court's interpretation of Proposition 218

Claimants submit that based on governing caselaw, the intent of the voters in adopting Proposition 218 and article XIII D, section 6(c) was not, contrary to SB 231, to include storm water storm drainage within the "sewer" voter exemption, and thus SB 231 should not be relied upon by the Commission to limit subvention of funds for expenditures made on and after January 1, 2018.

⁸ DPD at 222-225.

⁹ (2002) 98 Cal.App.4th 1351.

¹⁰ 98 Cal.App.4th at 1358-359.

B. SB 231, Which Purports to “Correct” a Court’s Interpretation of article XIII D, section 6, Misinterprets Proposition 218 and the Historical Record and Should Not Be Relied Upon by the Commission

In 2002, the Sixth District Court of Appeal in *City of Salinas* held that a “storm drainage fee” imposed by the city on property owners to fund efforts to reduce or eliminate pollutants in stormwater drains separate from the sanitary or industrial sewer system did not qualify for the exemption from the voter approval requirement in Cal. Const. art. XIII D, section 6 applicable to sewer or water services.¹¹

In 2017 the Legislature enacted SB 231,¹² which amended Govt. Code § 53750 to define what constitutes a “sewer” for purposes of Calif. Const. article XIII D, section 6(c):

“Sewer” includes systems, all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or drainage purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface or storm waters, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface or storm waters. “Sewer system” shall not include a sewer system that merely collects sewage on the property of a single owner.

Govt. Code § 53750(k).

SB 231 also added Govt. Code § 53751, which sets forth legislative findings on the amendment to § 53750. Section 53751(h) states that the Legislature intended to overrule *City of Salinas* because that court failed, among other things, to recognize that the term “sewer” had a “broad reach” “encompassing the provision of clean water and then addressing the conveyance and treatment of dirty water, whether that water is rendered unclean by coming into contact with sewage or by flowing over the built-out human environment and becoming urban runoff.”

Section 53751(i) included a finding that “[n]either the words ‘sanitary’ nor ‘sewerage’ are used in Proposition 218, and the common meaning of the term ‘sewer services’ is not ‘sanitary sewerage.’ In fact, the phrase ‘sanitary sewerage’ is uncommon.” Section 53751(i) also cited a series of pre-Proposition 218 statutes and cases which, it was asserted, “reject the notion that the term ‘sewer’ applies only to sanitary sewers and sanitary sewerage.” Finally, as quoted in the Draft Proposed Decision,¹³ Section 53751(f)

¹¹ 98 Cal.App.4th at 1357-1358.

¹² Stats. 2017, ch. 536.

¹³ DPD at 233-34.

criticized *City of Salinas* for “disregarding the plain meaning of the term ‘sewer’” and concluded that the court “substituted its own judgment for the judgment of voters.”

While in adopting SB 231, the Legislature imposed its own interpretation of what the voters intended when they adopted Proposition 218, recent governing caselaw has held that this interpretation conflicts with the meaning actually intended by the voters.

1. SB 231 Does Not Apply Retroactively

Before addressing the merits of SB 231, Claimants agree that the statute operates *prospectively* from January 1, 2018 and thus does not have retroactive effect.¹⁴ The Third District Court of Appeal so held in *San Diego Permit Appeal II*.¹⁵

2. Governing Appellate Caselaw Contradicts the Definition of “Sewer” Propounded in SB 231

The final word on the validity of any statute purporting to interpret the California Constitution is left to the courts.¹⁶ Thus, the validity of SB 231 is not before the Commission. *San Diego Permit Appeal II*, however, established that SB 231 conflicts with the intent of the voters who adopted Proposition 218, and thus cannot support the position that the taxpayer vote exemption applies at any time to the stormwater provisions at issue in this Test Claim. Because the Constitution cannot be modified by a legislative enactment,¹⁷ attempts to do so are invalid.

SB 231 purported to re-define Calif. Const. art. XIII D, section 6(c) by amending the Proposition 218 Omnibus Implementation Act, Govt. Code § 53750 *et seq.* (“Implementation Act”). As *San Diego Permit Appeal II* found, this amendment occurred long after the approval of Proposition 218; the Legislature did not define “sewer” when it adopted the Act in 1997, nor in subsequent amendments prior to SB 231, which was adopted 15 years after *City of Salinas*.¹⁸

While in SB 231, the Legislature declared that *City of Salinas* “failed to follow long-standing principles of statutory construction by disregarding the plain meaning of the term “sewer,”¹⁹ in its review of SB 231, *San Diego Permit Appeal II* also applied statutory

¹⁴ DPD at 244.

¹⁵ 85 Cal.App.5th at 577.

¹⁶ *Cf. City of San Buenaventura v. United Water Conservation Dist.* (2017) Cal. 5th 1191, 1209 n.6 (“the ultimate constitutional interpretation must rest, of course, with the judiciary.”); see also *County of Los Angeles v. Comm’n on State Mandates*, *supra*, 150 Cal.App.4th at 921 (overruling statute that purported to shield MS4 permits from article XIII B section 6 and holding that a “statute cannot trump the constitution.”)

¹⁷ *County of Los Angeles*, *supra*, 150 Cal.App.4th at 921.

¹⁸ 85 Cal.App.5th at 570.

¹⁹ Govt. Code § 53751(f).

construction principles to divine the voters' intent in adopting Proposition 218.²⁰ To ascertain that intent, the court explained "that we turn first to the initiative's language, giving the words their ordinary meaning as understood by 'the average voter.'"²¹

The question before the court was whether "voters intended the word "sewer" in Proposition 218 to exempt fees for only sanitary sewers or both sanitary and stormwater sewers from the measure's voting requirement."²² The court first looked at dictionary definitions of "sewer," but refused to hold that these were controlling: "We do not start and end statutory interpretation with dictionary definitions."²³ The court instead explained that "the meaning of a statute may not be determined from a single word or sentence; the words must be *construed in context*, and provisions relating to the same subject matter must be harmonized to the extent possible."²⁴

The court then turned to how Proposition 218 used the term "sewer" in context:

Analyzing Proposition 218's use of the word "sewer" in context renders the meaning clear. In the initiative, we find a clause – the measure's only other use of the word "sewer" – in which the voters distinguished the word "sewer" from a drainage system. Section 4 of article XIII D established procedures and voter approval requirements for creating assessments. Section 5 of article XIII D imposed those requirements on all existing, new, or increased assessments with exceptions. Of relevance here, one of the exempt existing assessments is: 'Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, *sewers*, water, flood control, *drainage systems* or vector control.'

If possible, we construe statutes and constitutional provisions to give meaning to every word, phrase, sentence, and part of an act. [citations omitted]. Thus, when the Legislature, or in this case the voters, use different words in the same sentence, we assume they intended the words to have different meanings. [citation omitted] By using "sewers" and "drainage systems" in the same sentence, the voters intended the words to have different meanings. Were it not so, the use of the terms to convey the same meaning would render them superfluous, an interpretation courts are to avoid.²⁵

The court also employed the legal maxim *expressio unius est exclusio alterius* ("when language is included in one portion of a statute, its omission from a different

²⁰ 85 Cal.App.5th at 566.

²¹ *Id.* at 566 (cleaned up), citing *People v. Adelman* (2018) 4 Cal. 5th 1071, 1080.

²² *Id.* at 567.

²³ *Ibid.*

²⁴ *Ibid.* (emphasis supplied).

²⁵ *Id.* at 567-68.

portion addressing a similar subject suggests that the omission was purposeful' and that the Legislature intended a different meaning"²⁶) to address how different parts of Proposition 218 used the terms "sewers" and "drainage systems." The court noted that the infrastructure listed in the exempt assessments section, art. XIII D, section 5, referred to both "sewers" *and* "drainage systems." By contrast, the taxpayer vote exemption in art. XIII D, section 6(c) referred only to "sewer . . . services."

The court concluded:

Given that the voters intended to differentiate between "sewers" and "[d]rainage systems," and that storm drainage systems provide water drainage,²⁷ we conclude the voters did not intend the exemption of "sewer" service fees from article XIII D's voter-approval requirement to include fees for stormwater drainage systems.²⁸

San Diego Permit Appeal II did not address the constitutionality of SB 231 because in determining that the statute was not retroactive, the court found that it did not apply to the test claim before it.²⁹ However, courts have held that a statute cannot change the meaning of a constitutional provision. In *Commission on State Mandates v. Dept. of Finance, supra*, the Second District Court of Appeal was called upon to review another statute, Govt. Code § 17516(c), which, inter alia, excluded orders issued by regional water boards, including MS4 permits, from the definition of an "executive order" which could give rise to a test claim. The Second District found the exclusion to be invalid since Cal. Const. art. XIII B, section 6 contained no exclusion for water board orders. In so finding, the court held that "a statute cannot trump the constitution."³⁰

In expanding the type of facilities and services covered by the term "sewer," SB 231 invalidly reinterpreted Proposition 218 in a way that ignored voter intent. Thus, there is significant question as to whether SB 231 provides authority to bar Claimants from seeking a subvention of funds for costs incurred on and after January 1, 2018.

3. The Statutes and Cases Cited in Support of SB 231 are Inapposite

San Diego Permit Appeal II held that the meaning of a "sewer" under Proposition 218 was clear and reliance on further "interpretative aids" was not required.³¹ Claimants

²⁶ *Id.* at 568 (quoting *In re Ethan C.* (2012) 54 Cal. 4th 610, 638).

²⁷ The court cited the Implementation Act's definition of "drainage systems" as "any system of public improvements that is intended to provide for erosion control, for landslide abatement, or for *other types of water drainage.*" 85 Cal.App.5th at 568 (emphasis in original).

²⁸ *Ibid.*

²⁹ *Id.* at 577.

³⁰ 150 Cal.App.4th at 921.

³¹ 85 Cal.App.5th at 569.

submit, however, that the invalidity of SB 231 is reinforced by the fact that the statutes and cases it cites do not support its definition of “sewers” in the Implementation Act.

Govt. Code § 53751 cites the following statutes and cases:

(a) Pub. Util. Code § 230.5: This statute is referenced³² as the source for the SB 231’s new “definition of ‘sewer’ or ‘sewer service.’” This statute defines “sewer system” to encompass both sanitary and storm sewers and appurtenant systems. However, the statute is in a section of the Public Utilities Code regarding privately owned sewer and water systems regulated by the Public Utilities Commission,³³ and not a “system of public improvements that is intended to provide . . . for other types of water drainage.”³⁴ Such small private systems may well provide both sanitary and stormwater service, but they are neither the same as the MS4 systems regulated by the test claim permit nor are public projects that Proposition 218 was written to address.

(b) Govt. Code § 23010.3. This statute³⁵ relates to the authorization for counties to spend money for the construction of certain conveyances, and defines those conveyances as “any sanitary sewer, storm sewer, or drainage improvements . . .” Citation to this statute does not support SB 213, since the language identifies “sanitary sewer,” “storm sewer” and “drainage improvements” as separate items, and also contradicts the statement in Govt. Code § 53751(g) that the phrase “sanitary sewerage” is uncommon. The similar phrase “sanitary sewer” is commonly found, as noted below.

(c) The Street Improvement Act of 1913: Govt. Code § 53751(i)(3) references only the name of this statute, Streets & Highways Code §§ 10000-10706, but cites no section. However, a section within this Act, Streets & Highways Code § 10100.7, allowing a municipality to establish an assessment district to pay for the purchase of already constructed utilities, separately defines “water systems” and “sewer systems,” with the latter defined as: “sewer system facilities, including sewers, pipes, conduits, manholes, treatment and disposal plants, connecting sewers and appurtenances for providing sanitary sewer service, or capacity in these facilities” *Ibid.* This limitation again contradicts SB 231.

(d) *Los Angeles County Flood Cont. Dist. v. Southern Cal. Edison Co.*³⁶ is cited³⁷ for the proposition that the California Supreme Court “stated that ‘no distinction has been made between sanitary sewers and storm drains or sewers.’” This case concerned whether Edison was legally responsible to pay to relocate its gas lines to allow

³² Govt. Code § 53751(i)(1).

³³ See Pub. Util. Code § 230.6, defining “sewer system corporation” to include “every corporation or person owning, controlling, operating, or managing any sewer system for compensation within this state.”

³⁴ Govt. Code § 53750(d).

³⁵ Cited in Govt. Code § 53751(i)(2).

³⁶ (1958) 51 Cal. 2d 331

³⁷ Govt. Code § 53751(i)(4)

construction of flood district storm drains. The Court concluded that the utility was. In holding that there was no distinction between sanitary sewers and storm drains or sewers *as to Edison's payment obligation*, the Court was not also holding that a "sewer" necessarily filled both sanitary and storm functions. In fact, the Court distinguished between "sanitary sewers" and "storm drains or sewers" in the language of the opinion.³⁸

(e) *County of Riverside v. Whitlock*,³⁹ *Ramseier v. Oakley Sanitary Dist.*,⁴⁰ and *Torson v. Fleming*⁴¹ were also cited in Govt. Code § 53751(i)(5) as examples of "[m]any other cases where the term 'sewer' has been used interchangeably to refer to both sanitary and storm sewers." However, the holdings in these cases are more limited. *County of Riverside* refers to "sewer" only in a footnote, which quotes from an Interim Assembly Committee Report discussing public improvements including "streets, storm and sanitary sewers, sidewalks, curbs, etc." (language which distinguishes between storm and sanitary sewers).⁴² In another footnote quoting Street & Highways Code § 2932 regarding assessments for public improvements, the phrase "sewerage or drainage facilities" is employed, again reflecting a distinction between these functions and assigning the function of sanitary services to "sewerage."⁴³

Ramseier involved a dispute over a contract to expand a district's "storm and sanitary sewer system."⁴⁴ This was the only reference to "sewers" in the case, and that reference distinguished between "storm" and "sanitary" sewers. The rationale for citation to *Torson* is unclear, though the case involved a requested extension of a sanitary sewer, and the statutes cited in the case referred, separately, to both "sanitary" and "storm" sewers.⁴⁵ While these cases present only limited examples of how the term "storm sewer" or "sanitary sewer" were employed, in all of them, a distinction was drawn between them.

4. There is Significant Evidence that the Legislature and the Courts Considered "Sewers" to be Different from "Storm Drains" Prior to the Adoption of Proposition 218

There are numerous pre-Proposition 218 California statutes and cases which identify the term "sewer" as denoting only sanitary sewers and not storm sewers. For example, Education Code § 81310, in identifying the power of a community college board to convey an easement to a utility, refers to "water, sewer, gas, or storm drain pipes or ditches, electric or telephone lines, and access roads." (emphasis added). There is no ambiguity in this statute – the "sewer" being referred cannot be a storm sewer, as "storm

³⁸ 51 Cal. 2d at 335.

³⁹ (1972) 22 Cal.App.3d 863.

⁴⁰ (1961) 197 Cal.App.2d 722.

⁴¹ (1928) 91 Cal. App. 168.

⁴² 22 Cal.App.3d at 874 n.9.

⁴³ 22 Cal.App.3d at 869 n.8.

⁴⁴ 197 Cal.App.2d at 723.

⁴⁵ 91 Cal.App. at 172.

drain” pipes are specifically referenced.⁴⁶

Another example is Govt. Code § 66452.6, relating to the timing of extensions for subdivision tentative map act approval, which defines “public improvements” to include “traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, *flood control or storm drain facilities*, *sewer facilities*, water facilities, and lighting facilities.”⁴⁷ Again, there is no ambiguity; the Legislature separately defined “flood control or storm drain facilities” from “sewer facilities.”

Similarly, Health & Safety Code § 6520.1 provides that a sanitary district can prohibit a private property owner from connecting “any house, habitation, or structure requiring *sewerage or drainage* disposal service to any privately owned *sewer or storm drain* in the district.” Defining “sewer” as a sanitary utility distinct from “storm drain” continued after the adoption of Proposition 218. For example, in Water Code § 8007, effective May 21, 2009, the Legislature made the extension of certain utilities into disadvantaged unincorporated areas subject to the prevailing wage law, and defined those utilities as the city’s “water, *sewer, or storm drain* system.” (emphasis added).

Cases, too have used the term “sewer” to mean a sanitary sewer instead of a storm drain. For example, in *E.L. White, Inc. v. Huntington Beach*,⁴⁸ the Supreme Court used the terms “storm drain” and “sewer” separately in discussing the liability of the city and a contractor for a fatal industrial accident. In *Shea v. Los Angeles*,⁴⁹ the court referred separately to “sanitary sewer” and “sewers” in addition to a “storm drain.” In *Boynton v. City of Lockport Mun. Sewer Dist.*,⁵⁰ the court discussed whether “sewer rates” were properly assessed by the city, and in that case, the court consistently used the term “sewer” to refer to sanitary sewers handling sewage.

Thus, there is significant evidence, in the language of the ballot measure, in the interpretation courts are required to give to the measure, and in the prevailing legislative and judicial usage of the term “sewer,” to support the holding in *San Diego Permit Appeal II* that Proposition 218 voters intended what *City of Salinas* found, that storm drainage was different from sewers and could not be included in the voter exclusion provision in article XIII D, section 6. As such, SB 231 was an attempt by the Legislature to ignore the intent of the voters and should not be relied upon by the Commission to refuse a subvention of funds for the costs of unfunded state mandates in the test claim permit incurred on and after January 1, 2018.⁵¹

⁴⁶ See *K.C.*, *supra*, 24 Cal.App.5th at 1011 n.4 (when Legislature uses different words in the same sentence, it is assumed that it intended the words to have different meanings).

⁴⁷ Govt. Code § 66452.6(a)(3) (emphasis added).

⁴⁸ (1978) 21 Cal. 3d 497.

⁴⁹ (1935) 6 Cal.App.2d 534, 535-36.

⁵⁰ (1972) 28 Cal.App.3d 91, 93-96.

⁵¹ Claimants agree with the DPD’s conclusion, based on the holding of the Court of Appeal in *San Diego Permit Appeal II*, that Govt. Code § 17556(d) does not apply to deny a claim when voter approval of a property-related stormwater fee is required. See DPD at 239-243.

5. The Burden of Establishing an Exception to Subvention Based on the Ability to Impose Property-Related Fees is on the State Agencies

Draft Proposed Decision Section IV.E.2 concludes that on and after January 1, 2018, Claimants “have authority pursuant to their constitutional police powers and other statutory authority to impose property-related fees” for various new activities in the test claim permit, in particular, Part VI.E.1.c. and Attachments M, O, Q, and P.⁵² Claimants submit that this question is not settled, and that appellate decisions support their position that the state had not met its burden to show that Claimants have the authority to impose property-related fees to pay for test claim permit requirements.⁵³

Proposition 218 lays out various substantive requirements for property-related fees in Calif. Const. art. XIII D, section 6. These are set forth in the DPD⁵⁴ and include requirements that a fee “not exceed the proportional cost of the service attributable to the parcel,” that the fee is for a service “that is actually used by, or immediately available to, the owner of the property in question” and that the fee is not imposed “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.”⁵⁵ Even if a local government has constitutional or statutory authority⁵⁶ potentially to impose a fee, failure to meet these substantive constitutional requirements means that such a fee cannot be levied as a

⁵² DPD at 227.

⁵³ In addition to the above-identified provisions in the test claim permit, Claimants lack authority to impose property-related fees for other provisions of the Permit which the DPD concluded did not qualify for subvention. These provisions are: (1) the other TMDL-related provisions identified in item A. on page 2 of the DPD; (2) requirements concerning the prohibition of non-stormwater discharges, identified in item B on DPD page 2; (3) requirements relating to Illicit Connections and Discharge Elimination Program, identified in item C on DPD page 2; (4) requirements relating to the Public Information and Participation Program, identified in item D on DPD page 2; and (5) requirements relating to Public Agency Activities Program, identified in item H on DPD page 3.

⁵⁴ DPD at 234-35.

⁵⁵ Calif. Const. art. XIII D, section 6(b)(3)-(5).

⁵⁶ The DPD cites two statutes, Health & Safety Code § 5471 and Govt. Code § 38902, as providing “statutory authority” to impose “property-related fees for the [Test Claim Permit] activities.” DPD at 227 and fn. 1012. Neither supports this assertion. The first statute restricts the use of derived revenues “only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities, to repay principal and interest on bonds issued for the construction or reconstruction of these water systems and sanitary, storm drainage, or sewerage facilities and to repay federal or state loans or advances made to the entity for the construction or reconstruction of water systems and sanitary, storm drainage, or sewerage facilities.” These uses do not include programs to comply with regulatory requirements. The latter statute applies on its face only to “sewers” and does not reference storm drain systems.

property-related fee. Lacking such authority, a subvention of funds is required for the state-mandated requirements at issue.⁵⁷

Given the substantive requirements of article XIII D, section 6, the question arises as to which party, the State or local government, has the burden to show that a property-related fee can or cannot meet those requirements. The California Supreme Court has answered that question by holding that a state agency asserting an exception to subvention under article XIII B, section 6 “bears the burden of demonstrating that it applies.”⁵⁸ This holding applies in this Test Claim and is binding on the State. Since in this Test Claim, an exception to subvention is based on the procedural and substantive requirements of the Constitution applicable to property-related fees, it is the burden of the Water Boards and the Department of Finance to show that a property-related fee meets the substantive requirements in article XIII D, section 6.

The Supreme Court’s holding on which party has the burden of demonstrating an exception to subvention under article XIII B, section 6, was echoed by the Second District Court of Appeal in *Dept. of Finance v. Comm. on State Mandates*,⁵⁹ where the court assessed the specific substantive requirements of article XIII D in detail and found that the Water Boards and the Department of Finance had not met their burden of showing that these requirements were satisfied for a property-related fee to install and maintain trash receptacles at transit stops.⁶⁰

The Draft Proposed Decision, however, contends that the Commission is bound by *San Diego Permit Appeal II*, which held that while the State “has the burden of establishing that permittees have fee authority, . . . that burden does not require the State also to prove permittees as a matter of law and fact are able to promulgate a fee that satisfies article XIII D’s substantive requirements.”⁶¹ While that court attempted to distinguish its holding from that of the Second District by arguing that the court there found as a matter of law and undisputed fact that the local agencies lacked authority to pay for the transit trash receptacles, the court also acknowledged that “to the extent *Los Angeles Mandates II* requires the State to prove more, we respectively disagree with its interpretation.”⁶²

While the Draft Proposed Decision views the Third District’s opinion as controlling,⁶³ the plain language of the two opinions, and that of the controlling Supreme Court opinion in *Dept. of Finance*, *supra*, reflects at minimum, a split in appellate authority regarding the burden in addressing the existence of an exception to subvention. Claimants submit that, contrary to the DPD, the question is not settled and thus does not

⁵⁷ *Dept. of Finance v. Comm. on State Mandates*, *supra*, 59 Cal.App.5th at 565.

⁵⁸ *Dept. of Finance v. Comm. on State Mandates* (2016) 1 Cal. 5th 749, 772.

⁵⁹ (2021) 59 Cal.App.5th 546.

⁶⁰ *Id.* at 568-69.

⁶¹ *San Diego Permit Appeal II*, *supra*, 85 Cal.App.5th at 584-85.

⁶² *Id.* at 585

⁶³ DPD at 237-39.

provide controlling authority for the Commission to conclude that Claimants have the authority to adopt property-related fees for the provisions in the test claim permit.

6. Neither the Department of Finance nor the Water Boards Have Shown that the Substantive Requirements of Article XIII D, Section 6, Can be Met in this Test Claim

Neither the Department of Finance nor the Water Boards have shown that the substantive requirements of article XIII D, section 6, can be met with regard to the specific provisions at issue in this Test Claim. The Department of Finance and the Water Boards have the burden of proof on this issue. *Dept. of Finance v. Commission*, 1 Cal. 5th at 769.

In their previous comments, the agencies have failed to address those requirements. The Department of Finance merely asserts in its comments on the Test Claim⁶⁴ that Claimants “have authority to impose property-related fees under their police power for alleged mandated permit activities.”⁶⁵ There is no discussion of the substantive requirements of article XIII D, section 6. Similarly, in their comments on fee authority for the requirements in the test claim permit,⁶⁶ the Water Boards do not discuss any of the substantive requirements of article XIII D, section 6 but rather simply asserted that Claimants have fee authority.⁶⁷ There is thus no evidence in the record that the State agencies have assessed the ability of Claimants to apply property-related fees that met the substantive requirements of the California Constitution.

The Draft Proposed Decision concludes that “here, there is no showing as a matter of law or fact that a fee cannot meet the substantive requirements of article XIII D, section 6(b).”⁶⁸ With respect, Claimants submit that this is not a showing that they are required to make, at least under controlling Supreme Court precedent and the decision of the Second District Court of Appeal in *Dept. of Finance v. Comm. on State Mandates*.⁶⁹

⁶⁴ Letter from Erika Li, Program Budget Manager, Department of Finance to Heather Halsey, Executive Director, Commission on State Mandates, January 26, 2018.

⁶⁵ *Id.* at 1.

⁶⁶ Letter from Jennifer L. Fordyce, Esq., Office of Chief Counsel, State Water Resources Control Board to Heather Halsey, Executive Director, Commission on State Mandates, June 1, 2018 (“Water Board Comments”), at 35-40.

⁶⁷ *Ibid.* That discussion also referenced SB 231 (Water Board Comments at 37). The issues with relying on that statute are addressed in these comments above. Additionally, the Water Boards cited various statutes which they claimed provided fee authority to Claimants. The non-applicability of those statutes was previously addressed by Claimants in their Rebuttal Comments (Rebuttal Comments of Los Angeles County Local Agency Test Claimants, 13-TC-01 and 13-TC-02, January 29, 2019, at 86-87 and Rebuttal Comments of County of Los Angeles and Los Angeles County Flood Control District, 13-TC-01 and 13-TC-02, January 29, 2019, at 86-87).

⁶⁸ DPD at 237.

⁶⁹ While the Draft Proposed Decision cites no other case authority, it references a “Fee Study and Ordinance” published on the website of a private non-profit corporation, the California Stormwater Quality Association (CASQA), purporting to set forth how local governments could establish stormwater fees that met one of the substantive requirements of Proposition 218, namely the

Moreover, there is no evidence in the record that Claimants have the authority to impose property-related fees “which meet the substantive requirements of article XIII D, section 6,” as the Draft Proposed Decision concludes.⁷⁰

7. Claimants Lack the Ability to Impose Regulatory Fees for Provisions in the Test Claim Permit

Section IV.E.3 of the Draft Proposed Decision discusses the availability of regulatory fees to pay for various land development and inspection requirements in the test claim permit, and concludes that Claimants “have the legal authority to impose or increase regulatory fees” to pay for those requirements. In particular, the Draft Proposed Decision concludes that test claim permit provisions in Part VI.D.7.d.iv.1.a., b., and c. and Attachment E, Part X, as well as Parts VI.D.6.b., d. and e. and VI.D.8 do not impose costs mandated by the state because permittees are not restricted from levying regulatory fees to pay for such requirements.⁷¹

As the Draft Proposed Decision notes, local governments are authorized to use their police powers to impose certain regulatory fees to recover the costs of regulating businesses and the development and use of real property. This authority is, however, subject to constitutional limitations imposed by Propositions 218 and 26. In particular, article XIII C, section 1(e)⁷² establishes the conditions which a levy, charge or exaction must meet in order for it not to constitute a “special tax” under Calif. Const. art. XIII A, section 4.

Various provisions in the test claim permit which cannot be paid for through regulatory fees. For example, development requirements applicable to municipal projects in covered in Part VI.D.7 and Attachment E, Part X (noted above) cannot be recovered. The same is true for the requirements in Parts VI.D.6 and VI.D.8 noted above.

Beyond those requirements identified in the Comments, other development-related provisions in Permit Part VI.D.9 relating to the retrofitting of existing development cannot be recovered from private parties, since the requirements relate to future potential development/redevelopment which may or may not occur and existing property owners receive no service or benefit which could justify a regulatory fee. These provisions are found in Part VI.D.9.d.i, ii, iv and v.

requirement that a fee not exceed the proportional cost of the service attributable to the parcel.” DPD at 238-39. This document, produced by a private organization, is not evidence of the ability of test claimants to impose fees that meet any of the substantive requirements of Proposition 218, including that of proportional cost.

⁷⁰ DPD at 239.

⁷¹ DPD at 256.

⁷² The conditions are set forth in the DPD at 250 and will not be repeated in these Comments.

VI. CONCLUSION

For the foregoing reasons, Claimants' Test Claim should be approved.

I declare under penalty of perjury that the foregoing, signed on October 17, 2025 is true and correct to the best of my personal knowledge, information, or belief.

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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:

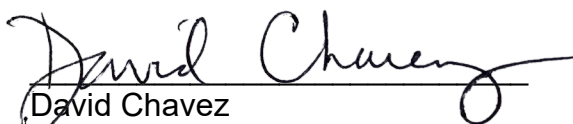
- **Current Mailing List dated October 16, 2025**
- **Claimants' Comments on the Draft Proposed Decision filed October 17, 2025**
- **Finance's Comments on the Draft Proposed Decision filed October 17, 2025**
- **Water Boards' Comments on the Draft Proposed Decision filed October 17, 2025**

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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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/25

Claim Number: 13-TC-01 and 13-TC-02

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

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City of Bellflower
City of Beverly Hills
City of Carson
City of Cerritos
City of Commerce
City of Downey
City of Huntington Park
City of Lakewood
City of Manhattan Beach
City of Norwalk
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 Westlake Village
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Los Angeles County Flood Control District

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