

*RECEIVED*  
September 19, 2024  
*Commission on  
State Mandates*

# Commission on State Mandates

## September 27, 2024

### Agenda VA(2): Appeal of Executive Director's Decision of Duplicate Test Claim and Motion to Consolidate

City of San Jose, Appellant

# Municipal Regional Stormwater Permits

- This Commission is familiar with Stormwater Permits:
  - *Department of Finance v. Commission on State Mandates (County of San Diego)* (2022) 85 Cal.App.5<sup>th</sup> 535
  - *Department of Finance v. Commission on State Mandates (County of Los Angeles)* (2021) 59 Cal.App.5<sup>th</sup> 546
  - *Department of Finance v. Commission on State Mandates (County of Los Angeles)* (2017) 18 Cal.App.5<sup>th</sup> 661
  - *Department of Finance v. Commission on State Mandates (County of Los Angeles)* (2016) 1 Cal.5<sup>th</sup> 749

# Pending Consolidated Action for San Francisco Region Permit (eff. 12/1/09)

*California Regional Water Quality Control Board, San Francisco Region, Order No. R2-2009-0074, 10-TC-02, 10-TC-03, and 10-TC-05*

- Consolidated Claims of the City of Dublin, City of San Jose, County of Santa Clara
- Draft Proposed Decision

# Timeline on San José's New Test Claim

Date	Event
6/30/2023	Union City and San José file Test Claims
	San José Test of 10 Provisions: C.2, C.3, C.5., C.10, C.11, C.12, C.15, C.17, C.20, C.21
10/11/2023	Director's Decision Notice of Duplicate and Incomplete Test Claim
1/9/2024	Union City and San José file Amended Test Claims
	San José's Test limited to Provision C. 17 <i>Discharges Associated with Unsheltered Homeless</i>
2/23/2024	Notice of Duplicative and Incomplete Test Claims
5/2024	Union City and San José file Second Amended Test Claims
6/18/2024	Director's Rejection of Duplicative Claim
	Appeal of Decision

# Regulation 2 CCR 1183.1

...the first claim filed on a statute or executive order by a similarly situated claimant is the test claim and *no duplicate test* claims will be accepted by the Commission. Other similarly situated affected agencies may participate in the process by filing comments in writing on any agenda item as provided in section 1181.10 of these regulations, and may attend any Commission hearing on the test claim and provide written or oral comments to the Commission.

*Affected agencies that are not similarly situated, meaning that test claim statutes affect them differently, may file a test claim on the same statutes as the first claim, but must demonstrate how and why they are affected differently.*

# Provision C.17

## Discharges Associated with Unsheltered Homeless Populations (new as of 7/1/22)

Municipal Regional Stormwater Permit  
Order No. R2-2022-0018

NPDES Permit No. CA8612008  
Provision C.17.

### C.17. Discharges Associated with Unsheltered Homeless Populations

The purpose of this Provision is to identify and ensure the implementation of appropriate control measures, by all Permittees, to address non-stormwater discharges into MS4s associated with unsheltered homeless populations.

Municipal Regional Stormwater Permit  
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This task's broader goals are to recognize non-stormwater pollutant sources associated with unsheltered homeless populations, reasons for discharges, and means by which they occur, and develop useful information that can be used toward prioritizing individual Permittee and collaborative best management practices for reducing or

Municipal Regional Stormwater Permit  
Order No. R2-2022-0018

NPDES Permit No. CA8612008  
Provision C.17.

may be implemented include, but are not limited to, access to emergency shelters; the provision of social services and sanitation services; voucher programs for proper disposal of RV sanitary sewage; establishment of designated RV "safe parking" areas or formalized encampments with

## C.17. Discharges Associated with Unsheltered Homeless Populations

The purpose of this Provision is to identify and ensure the implementation of appropriate control measures, by all Permittees, to address non-stormwater discharges into MS4s associated with unsheltered homeless populations, including discharges from areas where unsheltered people congregate (e.g., formal and informal encampments including, but not limited to, informal tent or small cabin encampments, areas where people living in vehicles park, and safe parking areas). This Provision refers to such discharges collectively as discharges associated with homelessness.

### C.17 a Permittee Requirements

C.17 - 1

C.17 - 2

C.17 - 3



(3) Each Permittee shall identify and implement appropriate best management practices to address MS4 discharges associated with homelessness that impact water quality, including those impacts that can lead to public health impacts. In addition, Permittees shall also evaluate and assess the effectiveness of those practices, specifically by reporting on the BMP control measures being implemented, the approximate portion of the Permittee's unsheltered homeless population and locations being served by those control measures, and the portion and locations of the Permittee's unsheltered homeless population not reached, or not fully reached by the implemented control measures. Examples of actions that

7/1/22)

C.17 - 2

Permit NPDES Permit No. CAS612008  
Provision C.17

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In addition, Permittees shall also evaluate and assess the information generated through the biennial point-source audits and related information, and the regional audits (as described above) to review and update their practices.

In their Annual Report, Permittees shall collectively submit, to the Executive Officer, a best management practice report as required in Provision C.17.a.i.(2).

In their 2025 Annual Reports, Permittees shall submit a map of the unsheltered homeless population as required in Provision C.17.a.i.(1).

In their 2025 Annual Reports, each Permittee shall report on the best management practices being implemented and include the information reporting required in Provision C.17.a.i.(3) and any changes to existing actions that the Permittee will implement over existing practices.

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C.17 - 3



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C.17 - 3



# San Jose's Claim does not Duplicate Union City's

- Union City “will incur” costs for implementing best management practices
- San Jose already implemented these practices

# Provision C.17 affects San José differently than Union City

- Unsheltered Population
  - Union City
    - 489
  - San José
    - 6,200
    - 70% unsheltered
- San José's implementation costs
  - \$19,022,757 for Fiscal Year 2022-2023

# Conclusion

San José respectfully requests this Commission:

- Consider its test claim; and
- Consolidate it with Union City's for efficiency.

## 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 September 20, 2024, I served the:

- **Current Mailing List dated September 19, 2024**
- **Appellant's Presentation for the Commission's September 27, 2024 Hearing filed September 19, 2024**

*Rejection of Duplicate Test Claim Filing, 23-AEDD-01*  
City of San Jose, Appellant

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 September 20, 2024 at Sacramento, California.

*Jill Magee*

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Jill Magee  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/19/24

**Claim Number:** 23-AEDD-01

**Matter:** Appeal of Executive Director Decision

**Claimant:** City of San Jose

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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