



May 19, 2021

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Ms. Theresa Dunham
Kahn, Soares & Conway, LLP
1415 L Street, Suite 400
Sacramento, CA 95814

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

*California Regional Water Quality Control Board, Los Angeles Region,
Order No. R4-2010-0108, 11-TC-01*

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010; Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).

County of Ventura and Ventura County Watershed Protection District, Claimants

Dear Mr. Cook and Ms. Dunham:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on June 9, 2021**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Cook and Ms. Dunham
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or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 23, 2021** at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about July 9, 2021.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010, Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a)

*California Regional Water Quality Control Board, Los Angeles Region,
Order No. R4-2010-0108*

11-TC-01

County of Ventura and Ventura County Watershed Protection District, Claimants

EXECUTIVE SUMMARY

Overview

This Test Claim was filed on a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued by the Los Angeles Regional Water Quality Control Board, Order No. R4-2010-0108, to the County of Ventura and the Ventura County Watershed Protection District.¹

Staff finds the Test Claim was not timely filed pursuant to Government Code section 17551(c) and recommends that the Commission dismiss this Test Claim.

Procedural History

On July 8, 2010, the test claim permit (R4-2010-0108, *NPDES Permit No. CAS00-4002*) was adopted by the Los Angeles Regional Water Quality Control Board and states that the permit “shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”² The claimant filed the Test Claim on August 26, 2011.³ The Test Claim was deemed complete on September 8, 2011. The Notice of Incomplete Joint Test Claim Filing

¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 1, 124, 131. The city co-permittees specified in the permit include Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley, and Thousand Oaks.

² Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 39,262 (test claim permit, Finding G4).

³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 1.

was issued following a review by legal staff on March 3, 2017.⁴ The claimants filed the Response to Notice of Incomplete Joint Test Claim Filing on May 17, 2017. On May 26, 2017, Commission staff issued a Notice of Complete Joint Test Claim Filing, Removal From Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date. On August 23, 2017, the Los Angeles Regional Water Quality Control Board (Regional Board) filed the administrative record for the 2001 Los Angeles County MS4 permit,⁵ and the State Water Resources Control Board (State Board) filed the administrative record on the 2009 Ventura County MS4 permit.⁶ The Department of Finance (Finance) filed comments on the Test Claim on October 11, 2017.⁷ The Regional Board filed the administrative record for the 2009 Ventura County MS4 permit and the 2010 Ventura County MS4 permit on October 12, 2017.⁸ The State Board and Regional Board (the Water Boards) jointly filed late comments on October 30, 2017.⁹ The claimants filed rebuttal comments on January 2, 2018.¹⁰ Commission staff issued the Draft Proposed Decision on May 18, 2021.¹¹

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test

⁴ Exhibit B, Notice of Incomplete Test Claim Filing, issued March 3, 2017.

⁵ This administrative record for the 2001 Permit is not included as an exhibit to this matter due to its large size (82,219 pages/two gigabytes) which may not be able to be downloaded on many devices and can crash even powerful ones. The Commission’s current regulations, which were not in effect when the record was filed, now specify a maximum file size of 500 megabytes to avoid such file size issues in the future. Relevant excerpts of the administrative record are cited to and included in Exhibit X. The entire record may be found on the Commission’s website at <https://www.csm.ca.gov/matters/11-TC-01.php> and must be viewed using Adobe Acrobat or free [Adobe Reader](#).

⁶ Exhibit X, State Water Resources Control Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017.

⁷ Exhibit C, Finance’s Comments on the Test Claim, filed October 11, 2017, page 1.

⁸ This administrative record for the 2009 and 2010 Permits is not included as an exhibit to this matter due to its large size (44,080 pages/two gigabytes) which may not be able to be downloaded on many devices and can crash even powerful ones. The Commission’s current regulations, which were not in effect when the record was filed, now specify a maximum file size of 500 megabytes to avoid such file size issues in the future. Relevant excerpts of the administrative record are cited to and included in Exhibit X. The entire record may be found on the Commission’s website at <https://www.csm.ca.gov/matters/11-TC-01.php>, and must be viewed using Adobe Acrobat or free [Adobe Reader](#).

⁹ Exhibit D, Water Boards’ Late Comments on the Test Claim, filed October 30, 2017, page 1.

¹⁰ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 1.

¹¹ Exhibit F, Draft Proposed Decision, issued May 21, 2021.

claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹²

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	<p>Government Code section 17551(c) provides a period of limitation for test claim filings and states that “[l]ocal agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”</p> <p>The test claim permit was adopted on July 8, 2010, and states that it became effective the same date provided that U.S. EPA had no objections.¹³ The Test Claim was filed thirteen months after the</p>	<p><i>Not Timely Filed</i> – Based on the administrative records of the Water Boards, the period of limitation for the permit sections pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057 (which <i>first</i> ordered the requirements pled by the claimants and was never stayed or set aside), or at the latest July 8, 2010, the effective date of the test claim permit (which reconsidered Order No. 09-0057, but did not change the requirements pled by the claimants other than extending some due dates). Thus, the Test Claim filed on August 26, 2011, was not timely filed within 12 months following the effective date of</p>

¹² *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, which states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”).

Issue	Description	Staff Recommendation
	<p>effective date, on August 26, 2011.¹⁴</p> <p>The claimants assert that the Test Claim was timely filed because the effective date of the permit was delayed 50 days (until August 27, 2010) pursuant to the Memorandum of Agreement (MOA) between the State and U.S. EPA. The claimants argue that the MOA delay provision applies due to the “significant” number of comments received by the Los Angeles Regional Water Quality Control Board (Regional Board), and because the permit adopted on July 8, 2010 was revised from the draft permit issued on May 5, 2010, and the revision was not to accommodate U.S. EPA comments.¹⁵ The claimants also argue that the MOA is an extension of U.S. EPA’s authority under the Clean Water Act and so the provisions of the permit cannot</p>	<p>the executive order as required by Government Code section 17551(c).</p> <p>In addition, the claimants’ reliance on the MOA is misplaced. The MOA is a document signed by a State and U.S. EPA, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program and U.S. EPA's program oversight under the Clean Water Act and, thus, governs “the working relationship between the State and EPA.” It is a contract between those parties.¹⁷ The MOA does <i>not</i> provide notice to the permittees of the effective date of an NPDES permit, which is required by the Regional Board when it adopts a quasi-judicial order.¹⁸ All notices issued by the Regional Board indicate that the test claim permit became effective on July 8, 2010.</p>

¹⁴ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, Finding G4).

¹⁵ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 17. Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

¹⁷ 40 Code of Federal Regulations, section 123.24; Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-73 (Memorandum of Agreement); *Tyler v. Cuomo* (9th Cir. 2000) 236 F.3d 1124, 1134, analyzing an MOA between U.S. Department of Housing and Urban Development and the City of San Francisco, finding that the MOA is a contract and the City is bound by its terms.

¹⁸ Water Code section 13263(f); *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1385.

Issue	Description	Staff Recommendation
	“modify or supersede the provisions in the MOA.” ¹⁶	

Staff Analysis

Statutes of limitation do not begin to run until a cause of action accrues, and a cause of action accrues at “the time when the cause of action is complete with all of its elements.”¹⁹

Government Code section 17551(c) provides a period of limitation for test claim filings and states that “[l]ocal agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Thus, the period of limitation in Government Code section 17551(c) begins to run following the effective date of the statute or executive order, and the claimants have 12 months from that date to file a test claim. That deadline can be extended if the claimants assert that costs were first incurred after the effective date of the statute or executive order pled in the claim.

In this case, the test claim permit was adopted on July 8, 2010, and states that it became effective on the same date provided that U.S. EPA had no objections.²⁰ The Test Claim was filed thirteen months after the effective date, on August 26, 2011.²¹

The claimants assert, however, that the Test Claim was timely filed because the effective date of the permit was delayed 50 days (until August 27, 2010) pursuant to the Memorandum of Agreement (MOA) between the State and U.S. EPA.²²

Staff finds, based on the administrative records of the Water Boards, that the period of limitation for the permit sections pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057, or at the latest July 8, 2010, the effective date of the test claim permit noticed by the Regional Board, so the Test Claim filed August 26, 2011, was not timely filed within 12 months following the effective date of the executive order as required by Government Code section 17551(c).

Order No. 09-0057, a valid executive order within the meaning of article XIII B, section 6 of the California Constitution, adopted the permit that *first* ordered the requirements pled by the

¹⁶ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

¹⁹ *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 911.

²⁰ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, which states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”).

²¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, Finding G4).

²² Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17. Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

claimants, and was never stayed or vacated by the Regional Board.²³ The Regional Board reconsidered some sections of Order No. 09-0057 when it adopted the test claim permit on July 8, 2010, but did not change the requirements pled by the claimants other than extending some due dates. Thus, even if the test claim permit made the “cause of action . . . complete with all of its elements,” then the period of limitation would have accrued and began to run on July 8, 2010, which was the date noticed by the Regional Board as the effective date of the test claim permit. There is no evidence in the record or in documents publicly available of any notices issued by the Regional Board indicating that the test claim permit had a delayed effective date as asserted by the claimants.

Staff further finds that the claimants’ reliance on the MOA is misplaced. The claimants rely on the delay provisions of the MOA, arguing that the 21 comments received before the test claim permit was adopted was significant, and that changes were made to the latest version of the tentative permit and the changes were not to accommodate U.S. EPA requests.²⁴ The claimants assert that either of these required a 50-day delay in the effective date of the permit to provide U.S. EPA time to review the permit changes.²⁵ The claimants also argue that the MOA is an extension of U.S. EPA’s authority under the Clean Water Act and so the provisions of the permit cannot “modify or supersede the provisions in the MOA.”²⁶

The record in this case shows that U.S. EPA was notified of all 21 comments and made no objection to the tentative permit.²⁷ U.S. EPA fully supported the terms of the tentative permit, as stated in its June 4, 2010 comments.²⁸ At the July 8, 2010 hearing, a representative from U.S. EPA expressed support for the terms of the tentative permit, as modified.²⁹

More importantly, the MOA is a document signed by the State and U.S. EPA, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program and U.S. EPA's program oversight under the Clean Water Act. As such, the

²³ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919-920 (finding that Government Code section 17516 was unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of “executive orders.”).

²⁴ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

²⁵ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

²⁶ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

²⁷ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,953, 38,955; pages 38,966, 38,968; and pages 38,969, 38,978.

²⁸ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,656-38,657.

²⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,163-39,166, 39,208-39,209.

MOA governs “the working relationship between the State and EPA.”³⁰ It is a contract between those parties.³¹ The MOA does *not* provide notice to the permittees of the effective date of an NPDES permit, which is required by the Regional Board when it adopts a quasi-judicial order.³² All notices issued by the Regional Board indicate that the test claim permit became effective on July 8, 2010.³³ There is no evidence in the record or in documents publicly available that the permit had a delayed effective date.

Conclusion

Staff finds that the Test Claim was not timely filed within 12 months of the effective date of the executive order pursuant to Government Code section 17551(c).

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to dismiss the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

³⁰ 40 Code of Federal Regulations, section 123.24; Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-73 (Memorandum of Agreement).

³¹ *Tyler v. Cuomo* (9th Cir. 2000) 236 F.3d 1124, 1134, analyzing an MOA between U.S. Department of Housing and Urban Development and the City of San Francisco, finding that the MOA is a contract and the City is bound by its terms.

³² Water Code section 13263(f); *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1385.

³³ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 39,262 (test claim permit, Finding G4). Exhibit X, Regional Board, Region 4, Adopted Orders https://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/query.php?id=5894 (accessed April 5, 2021).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010³⁴

Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).

Filed on August 26, 2011.

County of Ventura and Ventura County Watershed Protection District, Claimants

Case No.: 11-TC-01

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

(Adopted July 23, 2021)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 23, 2021. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [dismiss/or not dismiss] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	

³⁴ The city co-permittees specified in the permit include Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley, and Thousand Oaks. Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017 (test claim permit), page 131.

Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice-Chairperson	

Summary of the Findings

This Test Claim was filed on an National Pollutant Discharge Elimination System (NPDES) stormwater permit, Order No. R4-2010-0108, by the County of Ventura and the Ventura County Watershed Protection District (claimants).³⁵

The Commission finds the test claim was not timely filed pursuant to Government Code section 17551(c) and is, therefore, dismissed.

Statutes of limitation do not begin to run until a cause of action accrues, and a cause of action accrues at “the time when the cause of action is complete with all of its elements.”³⁶

Government Code section 17551(c) provides a period of limitation for test claim filings and states that “[l]ocal agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Thus, the period of limitation in Government Code section 17551(c) begins to run following the effective date of the statute or executive order, and the claimants have 12 months from that date to file a test claim. That deadline can be extended if the claimants assert that costs were first incurred after the effective date of the statute or executive order pled in the claim.

In this case, the test claim permit was adopted on July 8, 2010, and states that it became effective the same date provided that U.S. EPA had no objections.³⁷ The Test Claim was filed thirteen months after the effective date, on August 26, 2011.³⁸

³⁵ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 1. The city co-permittees specified in the permit include Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley, and Thousand Oaks. Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 124, 131 (Permit).

³⁶ *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 911.

³⁷ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, which states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”).

³⁸ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, Finding G4).

The claimants assert, however, that the Test Claim was timely filed because the effective date of the permit was delayed 50 days (until August 27, 2010) pursuant to the Memorandum of Agreement (MOA) between the State and U.S. EPA.

The Commission finds, based on the administrative records of the Los Angeles Regional Water Quality Control Board (Regional Board) and the State Water Resources Control Board (State Board) (collectively “Water Boards”), that the period of limitation for the permit sections pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057, or at the latest July 8, 2010, the effective date of the test claim permit noticed by the Regional Board, so the test claim filed August 26, 2011, was not timely filed within 12 months following the effective date of the executive order as required by Government Code section 17551(c).

Order No. 09-0057, a valid executive order within the meaning of article XIII B, section 6 of the California Constitution, was the permit that *first* ordered the requirements that were pled by the claimants, and it was never stayed or vacated by the Regional Board.³⁹ The Regional Board reconsidered some sections of Order No. 09-0057 when it adopted the test claim permit on July 8, 2010, but did not change the requirements pled by the claimants other than extending some due dates. Thus, even if the test claim permit made the “cause of action . . . complete with all of its elements,” then the period of limitation would have accrued and began to run on July 8, 2010, which was the date noticed by the Regional Board as the effective date of the test claim permit. There is no evidence in the record or in documents publicly available of any notices issued by the Regional Board indicating that the test claim permit had a delayed effective date as asserted by the claimants.

The Commission further finds that the claimants’ reliance on the MOA is misplaced. The claimants rely on the delay provisions of the MOA, arguing that the 21 comments received before the test claim permit was adopted were significant, and that changes were made to the latest version of the tentative permit which were not to accommodate U.S. EPA requests.⁴⁰ The claimants assert that either of these required a 50-day delay in the effective date of the permit to provide U.S. EPA time to review the permit changes.⁴¹ The claimants also argue that the MOA is an extension of U.S. EPA’s authority under the Clean Water Act and so the provisions of the permit cannot “modify or supersede the provisions in the MOA.”⁴²

The record in this case shows that U.S. EPA was notified of all 21 comments and made no objection to the tentative permit.⁴³ U.S. EPA fully supported the terms of the tentative permit, as

³⁹ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919-920 (finding that Government Code section 17516 was unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of “executive orders.”).

⁴⁰ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

⁴¹ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

⁴² Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

⁴³ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,953, 38,955; 38,966, 38,968; and 38,969, 38,978.

stated in its June 4, 2010 comments.⁴⁴ At the July 8, 2010 hearing, a representative from U.S. EPA expressed support for the terms of the tentative permit, as modified.⁴⁵

More importantly, the MOA is a document signed by a State and U.S. EPA, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program and U.S. EPA's program oversight under the Clean Water Act and, thus, governs “the working relationship between the State and EPA.”⁴⁶ It is a contract between those parties.⁴⁷ The MOA does *not* provide notice to the permittees of the effective date of an NPDES permit, which is required by the Regional Board when it adopts a quasi-judicial order.⁴⁸ All notices issued by the Regional Board indicate that the test claim permit became effective on July 8, 2010.⁴⁹ There is no evidence in the record or in documents publicly available that the permit had a delayed effective date.

Accordingly, this Test Claim is dismissed on the ground that it is not timely filed pursuant to Government Code section 17551(c).

COMMISSION FINDINGS

I. Chronology

08/05/2009 The order prior to the order adopting the test claim permit (Order No. R4-2009-0057), containing the same activities alleged to be newly mandated in this test claim, became effective August 5, 2009.

⁴⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,656-38,657.

⁴⁵ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,163-39,166, 39,208-39,209.

⁴⁶ 40 Code of Federal Regulations, section 123.24; Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-73 (Memorandum of Agreement).

⁴⁷ *Tyler v. Cuomo* (9th Cir. 2000) 236 F.3d 1124, 1134, analyzing an MOA between U.S. Department of Housing and Urban Development and the City of San Francisco, finding that the MOA is a contract and the City is bound by its terms.

⁴⁸ Water Code section 13263(f); *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1385.

⁴⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 39,262 (test claim permit, Finding G4). Exhibit X, Regional Board, Region 4, Adopted Orders https://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/query.php?id=5894 (accessed April 5, 2021).

- 07/08/2010 The test claim permit (R4-2010-0108) was adopted and states that the permit “shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”⁵⁰
- 08/26/2011 The claimant filed the Test Claim.⁵¹
- 09/08/2011 The Test Claim was deemed complete.
- 03/03/2017 Commission staff issued the Notice of Incomplete Joint Test Claim Filing following review by legal staff.⁵²
- 05/17/2017 The claimants filed their Response to Notice of Incomplete Joint Test Claim Filing and revised the Test Claim.⁵³
- 05/26/2017 Commission staff issued the Notice of Complete Joint Test Claim Filing, Removal From Inactive Status, Schedule for Comments, Renaming of Matter, Request for Administrative Record, and Notice of Tentative Hearing Date.
- 08/23/2017 The Regional Board filed the administrative record for the 2001 Los Angeles County MS4 permit.⁵⁴
- 08/23/2017 The State Board filed the administrative record on the 2009 Ventura County MS4 permit.⁵⁵
- 10/11/2017 The Department of Finance (Finance) filed comments on the Test Claim.⁵⁶
- 10/12/2017 The Regional Board filed the administrative record for the 2009 Ventura County MS4 permit and 2010 Ventura County MS4 permit.⁵⁷

⁵⁰ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 124, 162 (test claim permit, and Finding G4); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,224, 39,262 (test claim permit, and Finding G4).

⁵¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 1.

⁵² Exhibit B, Notice of Incomplete Test Claim Filing, issued March 3, 2017.

⁵³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017.

⁵⁴ This administrative record for the 2001 Permit is not included as an exhibit to this matter due to its large size (82,219 pages/two gigabytes) which may not be able to be downloaded on many devices and can crash even powerful ones. The Commission’s current regulations, which were not in effect when the record was filed, now specify a maximum file size of 500 megabytes to avoid such file size issues in the future. The entire record may be found on the Commission’s website at <https://www.csm.ca.gov/matters/11-TC-01.php> and must be viewed using Adobe Acrobat or free [Adobe Reader](#).

⁵⁵ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017.

⁵⁶ Exhibit C, Finance’s Comments on the Test Claim, filed October 11, 2017, page 1.

⁵⁷ This administrative record for the 2009 and 2010 Permits is not included as an exhibit to this matter due to its large size (44,080 pages/two gigabytes) which may not be able to be

- 10/30/2017 The Water Boards filed late comments.⁵⁸
- 01/08/2018 The claimants filed rebuttal comments.⁵⁹
- 05/18/2021 Commission staff issued the Draft Proposed Decision.⁶⁰

II. Background

On August 26, 2011, the claimants filed this Test Claim on Order No. R4-2010-0108 (the test claim permit), which was adopted by the Regional Board on July 8, 2010. The permit states that it became effective on the adoption date provided that U.S. EPA had no objections.⁶¹ The claimants plead the following permit provisions, arguing that they impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution:

- Public Information/Participation Program- Part 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), and 4.C.2(d).; 4.C.3(a),(b).⁶² The claimants contend that these sections impose “[n]ew public outreach requirements including: distribution of storm water pollution prevention materials to auto parts stores, home improvement stores, and others; development of an ethnic communities strategy; distribution of school district materials to 50 percent of all K-12 students every two years or development of a youth outreach plan; creation and implementation of a behavioral change assessment; conducting pollutant-specific outreach; conducting corporate outreach; and implementing a business assistance program.”⁶³

downloaded on many devices and can crash even powerful ones. The Commission’s current regulations, which were not in effect when the record was filed, now specify a maximum file size of 500 megabytes to avoid such file size issues in the future. Relevant excerpts of the administrative record are cited to and included in Exhibit X. The entire record may be found on the Commission’s website at <https://www.csm.ca.gov/matters/11-TC-01.php> and must be viewed using Adobe Acrobat or free [Adobe Reader](#).

⁵⁸ Exhibit D, Water Boards’ Late Comments on the Test Claim, filed October 30, 2017, page 1.

⁵⁹ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 1.

⁶⁰ Exhibit F, Draft Proposed Decision, issued May 21, 2021.

⁶¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, which states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”).

⁶² Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 17-18, and 173-175 (test claim permit).

⁶³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 17-18.

- Reporting Program and Program Effectiveness Evaluation - Part 4.I.1⁶⁴; Part 3.E.1(e).⁶⁵ The claimants contend that these sections impose “[n]ew requirements to develop an electronic reporting program and an electronic reporting format; and, a new requirement to conduct a Program Effectiveness Assessment.”⁶⁶
- Special Studies - Part 4.E.III.3(a)(1)(D-E)⁶⁷; Attachment F, Section F (monitoring)⁶⁸; Part 4.E.IV.4⁶⁹; Part 4.E.III.2(c)(3)-(4).⁷⁰ The claimants contend that these sections impose “[n]ew requirements to conduct or participate in special studies to develop tools to predict and mitigate adverse impacts of hydromodification, and to comply with hydromodification control criteria; new requirements to update and expand the technical guidance manual; and, a requirement to develop an off-site mitigation list of sites/locations and schedule for completion of such projects.”⁷¹
- Watershed Initiative Participation – Part 4.B.⁷² The claimants contend that this section imposes “[n]ew requirements to participate in the Southern California Storm Water Monitoring Coalition (“SMC”); SMC Regional Bioassessment Monitoring Program; and, Southern California Bight Projects.”⁷³
- Vehicle and Equipment Wash Areas – Part 4.G.1.3(a).⁷⁴ The claimants contend that this section imposes a “[n]ew requirement for elimination of wash water discharges from County facilities for Fire Fighting Vehicles.”⁷⁵

⁶⁴ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 217 (test claim permit).

⁶⁵ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 170 (test claim permit).

⁶⁶ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 18.

⁶⁷ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 190 (test claim permit).

⁶⁸ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 285-286 (test claim permit).

⁶⁹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 196-197 (test claim permit).

⁷⁰ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 188 (test claim permit).

⁷¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 18.

⁷² Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 171-172 (test claim permit).

⁷³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 18.

⁷⁴ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 209 (test claim permit).

⁷⁵ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 18.

- Illicit Connection/Illicit Discharge Elimination – Part 4.H.1.3(a).⁷⁶ The claimants contend that this section imposes “[n]ew requirements for mapping the County storm drain system.”⁷⁷

The Test Claim was initially deemed complete. However, upon initial legal review, it was determined that the Test Claim was filed beyond the period of limitation required by Government Code section 17551 because it was filed 13 months after the effective date of the permit and there was no assertion in the Test Claim of when costs were first incurred. Government Code section 17551(c) states that “[l]ocal agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Thus, a notice of incomplete test claim was issued.⁷⁸ The claimants responded with a revised filing and legal arguments on the period of limitations issue.⁷⁹ The Test Claim was deemed complete so that a full legal analysis on the timeliness of this Test Claim could be considered by the Commission.

III. Positions of the Parties

A. County of Ventura and the Ventura County Watershed Protection District

The claimants argue that the Test Claim was timely filed because the effective date of the permit was delayed 50 days pursuant to the Memorandum of Agreement (MOA) between the State Water Resources Control Board and the U.S. Environmental Protection Agency (U.S. EPA). The claimants state that at Section II.F. of the MOA, attached to the Test Claim, provides that permits become effective 50 days after adoption “where the EPA has made no objection to the permit, if (a) there has been significant public comment, or (b) changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments).”⁸⁰ In arguing that the MOA’s 50-day delay applies, the claimants summarize the following events:

On May 5, 2010, the Los Angeles Water Board issued a draft Permit, Notice of Written Public Comment Period and Notice of Public Hearing. The EPA made no objection to the draft Permit as proposed by the Los Angeles Water Board on May 5, 2010, or prior to its adoption on July 8, 2010. There was, however, significant written public comment submitted on or before June 7, 2010, which was the closing date for submittal of written public comments. [citation omitted.]

⁷⁶ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 18 and 215-216 (test claim permit).

⁷⁷ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 18.

⁷⁸ Exhibit B, Notice of Incomplete Test Claim Filing, issued March 3, 2017.

⁷⁹ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 2 and 17.

⁸⁰ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 17, 93 (Memorandum of Agreement). The MOA is Exhibit A to the Declaration of Theresa A. Dunham.

In all, 21 written comment letters were submitted to the Los Angeles Water Board on or before June 7, 2010, including from diverse interests such as the Natural Resources Defense Council and the Building Industry Association of Southern California. Further, the National Resources Defense Council and the Building Industry Association of Southern California both requested and received Party status in this quasi-judicial proceeding. After the close of the written comment period, and prior to the close of the Public Hearing on July 8, 2010, further revisions were made to the draft Permit that was issued on May 5, 2010. The additional revisions were not the result of requests made by EPA but were due to comments provided by other interested parties. [citation omitted.]

Accordingly, the Permit adopted by the Los Angeles Water Board on July 8, 2010, was subject to significant written public comment and was revised as compared to the version that was sent to EPA on May 5, 2010. Thus, according to the terms of the binding MOA between EPA and the State Water Resources Control Board, the “effective date” of the Permit was “50 days after adoption.” 50 days after the July 8, 2010 adoption date is August 27, 2010. This Test Claim has been timely submitted in that it has been submitted within one year of the effective date of the 2010 Permit.⁸¹

The claimants further argue that the MOA governs the effective date of the 2010 Permit because the MOA “is an extension of U.S. EPA’s federal authority under the CWA [Clean Water Act],” so the Permit’s stated effective date “cannot modify or supersede the provisions in the MOA.”⁸² According to the claimants:

The 1989 MOA provides that final permits adopted by a RWQCB [Regional Water Quality Control Board] become effective on the date of adoption, 50 days after adoption, or 100 days after adoption, depending upon the nature of the permit and the level of public response to a draft permit. When an individual permit has received significant public comment, or when the final permit has changed from the draft permit sent to U.S. EPA for review other than changes requested by U.S. EPA, that permit “shall become effective on the 50th day after the date of adoption,” provided that U.S. EPA has not objected to the permit. [Citation omitted.] This 50-day time period is needed to provide U.S. EPA with adequate time to review a permit that has garnered significant public attention and/or has changed during the approval process. [Citation omitted.]

The 2010 Permit fits both of these criteria, even though only one is necessary to trigger the 50-day time period. First, 21 separate, substantive comments were timely submitted on the 2010 draft permit. [Citation omitted.] Commenters included environmental interest groups and industry groups, and some of those commenters requested and received party status in this proceeding. For instance, the Building Industry Association of Southern California, Building Industry Legal Defense Foundation, and Construction Industry Coalition on Water Quality (collectively, “BIA”) submitted comments on the 2010 Permit that focused on the land development section of the 2010 Permit and its

⁸¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 17.

⁸² Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

request that the Los Angeles Water Board consider including provisions for bio-infiltration designs for new developments and redevelopment projects, among other possible options for maintaining pre-construction hydrology in developments. [Citation omitted.] A letter submitted by the Oxnard Chamber of Commerce also raised concerns about the 2010 Permit's treatment of Low Impact Development best management practices, which could impact opportunities for development and redevelopment in the City of Oxnard. [Citation omitted.] This is significant public comment. Second, revisions were made to the draft permit issued on May 5, 2010 to address some of these comments. [Citation omitted.] Thus, the final permit approved by the Los Angeles Water Board on July 8, 2010 had changed from the draft permit sent to U.S. EPA for review on May 5, 2010, and those changes were not to address U.S. EPA comments. [Citation omitted.] Therefore, the 2010 Permit could not become effective before the U.S. EPA was provided the appropriate time for review as mandated by the MOA – meaning that the permit did not become effective on the date of the Los Angeles Water Board's adoption of the permit, but 50 days after the date of adoption pursuant to the provisions of the 1989 MOA.

The fact that the 2010 Permit is a continuation of Order Number 09-0057 (2009 Permit) does not change this analysis. Initially, the 2009 Permit was appealed to the SWRCB for review by the BIA, which challenged the adoption of the 2009 Permit based on late changes to the permit that were not provided to the public for review and comment. After the Los Angeles Water Board agreed to a voluntary remand of the 2009 Permit, it opened the permit up to public comment on a new tentative version of the permit. As mentioned above, during this reconsideration, the tentative 2010 Permit received significant public comment from stakeholders, several of which urged that the Los Angeles Water Board modify the permit from the version adopted in 2009. This created great uncertainty for the Claimants, because they did not know which provision the Los Angeles Water Board may or may not change, and which comments from the public it would choose to address and incorporate.

. . . The Los Angeles Water Board retained total discretion to alter any provision in its reconsideration of the 2009 Permit and ultimate adoption of the 2010 Permit. Therefore, filing a test claim on the 2009 Permit, while the permit was actively being reconsidered by the Los Angeles Water Board would have been premature because the specific mandates in the permit reasonably could have changed upon reconsideration.⁸³

B. Department of Finance

Finance's comments address the merits of the Test Claim. Finance "believes claimants do have stormwater fee authority undiminished by Propositions 218 or 26."⁸⁴ Finance also argues that claimants have fee authority under their police power for alleged mandated permit activities regardless of whether the fees receive voter approval pursuant to Proposition 218, and Proposition 26 (which excludes assessments and property-related fees imposed in accordance with Proposition 218 from the definition of taxes (art. XIIC, §1(e)(7))). Citing *Clovis Unified*

⁸³ Exhibit E, Claimants' Rebuttal Comments, filed January 2, 2018, pages 3-4.

⁸⁴ Exhibit C, Finance's Comments on the Test Claim, filed October 11, 2017, page 1.

School Dist. v. Chiang (2010) 188 Cal.App.4th 794, Finance asserts that claimants can choose “not to put a fee to the voters, or the voters can reject the fee, but not at the state’s expense,” and sufficient fee authority exists regardless of political feasibility.⁸⁵ Finance defers to the Water Boards on whether the Permit imposes a new program or higher level of service and the impact of the Supreme Court’s decision in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749.⁸⁶

C. Water Boards

In their comments on the Test Claim, the Water Boards argue that the Commission does not have jurisdiction over the Test Claim (filed August 26, 2011 and revised May 17, 2017) because it was not filed within 12 months of the effective date of the Permit (effective July 8, 2010). The Water Boards maintain that reliance on the MOA is incorrect because the Permit states it “shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.” And there is no dispute that the Permit was adopted on July 8, 2010 and U.S. EPA did not object to the Permit.⁸⁷ According to the Water Boards:

The Los Angeles Water Board’s decision to have the 2010 Permit take effect immediately upon adoption was intentional. Claimants’ reliance on the NPDES MOA between U.S. EPA and the State Water Board is also entirely misplaced as it ignores the context in which the Order was adopted. As described in Section II.C., above, the Los Angeles Water Board specifically declined to stay certain provisions of the 2009 Permit, stating “until the Los Angeles Water Board takes further action on the Ventura County MS4 Permit (which is currently scheduled for July 8, 2010), *the existing permit, including all of its provisions, remain in full force and effect.*” [citation omitted.] It was not necessary for the Board to delay the effective date of the 2010 Permit as the requirements in the 2010 Permit are virtually the same as those in the 2009 Permit. Thus, the Permittees had been subject to those same provisions since the effective date of the 2009 Permit and had already been implementing the provisions and, notably, incurring costs to implement those provisions. Moreover, the reconsideration of the permit in 2010 was to allow public comment on the very language that the Permittees, NRDC, and Heal the Bay proposed and advocated for.

. . . To the extent that Claimants believe the Los Angeles Water Board’s established effective date was contrary to the NPDES MOA with U.S. EPA, Claimants could have raised this issue before the Los Angeles Water Board and, if dissatisfied with the response, filed a petition with the State Water Board challenging the effective date. [Wat. Code, § 13320.] It did neither. The Commission is not the proper forum for Claimants to challenge the effective date.⁸⁸

⁸⁵ Exhibit C, Finance’s Comments on the Test Claim, filed October 11, 2017, pages 1-2.

⁸⁶ Exhibit C, Finance’s Comments on the Test Claim, filed October 11, 2017, page 1.

⁸⁷ Exhibit D, Water Boards’ Late Comments on the Test Claim, filed October 30, 2017, page 14.

⁸⁸ Exhibit D, Water Boards’ Late Comments on the Test Claim, filed October 30, 2017, page 15.

The Water Boards further argue: (1) the Regional Board found that the Permit provisions were required by Federal law, which findings are entitled to deference under *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749; (2) U.S. EPA has required similar provisions in its Permits; (3) the claimants could have sought substitute best management practices but have not exhausted their administrative remedies for doing so; (3) the challenged permit does not impose new programs or higher levels of service because the permit adopted in 2009 was prior law, not the 2000 permit; (4) the Permit does not impose requirements unique to local agencies; and (5) claimants have authority to impose fees for the contested permit provisions.⁸⁹

IV. Discussion

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

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁹⁰ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁹¹

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁹²
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁹³

⁸⁹ Exhibit D, Water Boards’ Late Comments on the Test Claim, filed October 30, 2017, pages 16-28.

⁹⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁹⁴
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁹⁵

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁹⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁹⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁹⁸

A. The Test Claim Was Not Timely Filed and Is, Therefore, Dismissed.

The law is clear that quasi-judicial administrative agencies, such as the Commission, have only the limited authority that is conferred upon them by law, and the courts will set aside their acts that are beyond their statutory jurisdiction.⁹⁹ In this respect, submitting a test claim to the Commission in accordance with Government Code sections 17500 et seq. is the exclusive method for resolving whether a cost is or is not a reimbursable state mandate.¹⁰⁰ Pursuant to Government Code section 17551(b), the Commission’s review of a test claim “may be had *only if*” the test claim is filed within the time limits specified in sections 17551(c).¹⁰¹ Government Code section 17551(c) states that “[l]ocal agency and school district test claims shall be filed not

⁹⁴ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁹⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁹⁶ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁹⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

⁹⁹ *American Federation of Labor v. Unemployment Insurance Appeals Board* (1996) 13 Cal.4th 1017, 1023; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679.

¹⁰⁰ *Grossmont Union High School Dist. v. State Board of Education* (2008) 169 Cal.App.4th 869, 884 citing *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 833-834; see also, Government Code section 17552 (“This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.”).

¹⁰¹ Emphasis added.

later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Thus, the Commission does not have the authority to hear and determine test claims filed beyond the period of limitation identified in Government Code section 17551 and any late filings must be dismissed.¹⁰²

In this case, the Test Claim was filed on August 26, 2011, 13 months after the Regional Board adopted the test claim permit on July 8, 2010. The permit stated that it became effective on the date of adoption provided that U.S. EPA had no objections.¹⁰³ The claimants assert that the effective date of the permit was delayed 50 days (until August 27, 2010) pursuant to the MOA between the State and U.S. EPA due to significant comments filed on the permit and changes made to the tentative permit prepared by Regional Board staff for the Board’s July 8, 2010 hearing and adopted by the Regional Board after the written comment period expired, and so the Test Claim was timely filed.¹⁰⁴

As explained below, the claimants’ reliance on the MOA is misplaced. The Commission finds that the period of limitation for the sections pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057 (which *first* ordered the requirements pled by the claimants and was never stayed or set aside), or at the latest July 8, 2010, the effective date of the test claim permit (which reconsidered Order No. 09-0057, but did not change the requirements pled by the claimants other than extending some due dates). Thus, the Test Claim filed on August 26, 2011, was not timely filed within 12 months following the effective date of the executive order as required by Government Code section 17551(c).

1. Based on the Relevant Portions of the Administrative Records of the Regional Board and State Water Board, the Provisions of the Test Claim Permit Pled by the Claimants Were Adopted in Order No. 09-0057, Effective August 5, 2009, and Although Some of the Due Dates Imposed in Order 09-0057 Were Extended in the Test Claim Permit, the Requirements Remained the Same.

As described below, all of the sections in the test claim permit that were pled by the claimants and alleged to impose a reimbursable state-mandated program were adopted in Order No. 09-0057, effective August 5, 2009. The 2009 permit was corrected in January 2010, consistent with the Regional Board’s vote and adoption of Order No. 09-0057, and later remanded back to the Regional Board to consider some perceived due process issues, which resulted in the adoption of the test claim permit on July 8, 2010 (R4-2010-0108). With respect to the sections pled by the claimants in this test claim, the test claim permit extended some due dates for compliance with some of those sections, giving the claimants more time to comply, but otherwise made no

¹⁰² California Code of Regulations, title 2, section 1183.1(h).

¹⁰³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit, which states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”).

¹⁰⁴ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 17.

substantive changes to the claimed requirements imposed by Order No. 09-0057. A summary of the events from the administrative records of the Water Boards follows.

- On May 7, 2009, the Regional Board adopted Order No. 09-0057, with an effective date 90 days thereafter (August 5, 2009).¹⁰⁵ Before the Regional Board's May 7, 2009 hearing, the permittees, the Natural Resources Defense Council (NRDC), and Heal the Bay came to an agreement on permit terms involving new development and redevelopment performance criteria, including onsite retention requirements; a five percent Effective Impervious Area (EIA) limitation, infeasibility criteria, a 30 percent EIA cap, and off-site mitigation provisions; elimination of the municipal action level (MAL) requirements in the tentative permit; and year round beach water quality monitoring at 10 sites.¹⁰⁶ The agreement was submitted to the Regional Board in a letter dated April 10, 2009.¹⁰⁷ At the May 7, 2009 hearing, these interests advocated that their agreement be incorporated into the permit verbatim in its entirety.¹⁰⁸
- The tentative permit that the Regional Board staff prepared for the May 7, 2009 hearing, included in Part 5, Section E.III. (New Development/ Redevelopment Performance Criteria) section 1 (Integrated Water Quality/Flow Reduction/Resource Management Criterion), section 2 (Hydromodification Control Criteria), and section 3 (Water Quality Mitigation Criteria).¹⁰⁹ Staff did not recommend incorporating the terms of the agreement into the permit.¹¹⁰
- At the May 7, 2009 hearing, the Regional Board amended the tentative permit by striking Part 2 (MALs) as well as Section E.III.1 of Part 5, and replacing it with the terms of the agreement.¹¹¹ Originally, the Board member stated the motion as striking all of Section

¹⁰⁵ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,119 (Section G.4 of Order No. 09-0057 sets the effective date 90 days from the May 7, 2009 adoption date: "This Order shall serve as a NPDES permit ... and shall take effect 90 days from Order adoption date provided the U.S. EPA has no objection.").

¹⁰⁶ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,876 (Hearing Notice for the test claim permit).

¹⁰⁷ Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 535-567.

¹⁰⁸ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,876 (Hearing Notice for the test claim permit).

¹⁰⁹ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 23,816, 23,670, 23,879-23,889 (Agenda Item for 2009 Tentative Permit, 2009 Revised Tentative Permit).

¹¹⁰ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 23,607 (Agenda Item for 2009 Tentative Permit).

¹¹¹ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,058 – 25,072 (May 7, 2009 Hearing Transcript).

E.III, but it was later clarified that she intended to strike only Section E.III.1. That motion was seconded and adopted.¹¹² With the removal of Part 2 (MALs), the agreement became Part 4.E.III.1. and 2. of the 2009 permit (Integrated Water Quality/Flow Reduction/Resources Management Criteria, and Alternative Compliance for Technical Infeasibility).¹¹³

- On June 2, 2009, the Regional Board issued Order No.09-0057.¹¹⁴ As issued, Order No. 09-0057 included the terms of the agreement in Part 4.E.III.1 and 2, but did not include Part 4, Sections E.III.3 (addressing Hydromodification), and E.III.4 (Water Quality Mitigation Criteria).¹¹⁵ As described further below, the omission of these sections was inadvertent and the permit was corrected January 13, 2010 and issued January 28, 2010.¹¹⁶
- Order No. 09-0057 contained the following parts (*except for the language in italics, which was added when the corrected permit was issued in January 2010*), which are the same parts included in the test claim permit and pled by the claimants in this Test Claim:
 - Public Information and Participation Program- Part 4.C.2(c)(1)(C), 4.C.2(c)(2),(6), (8), and 4.C.2(d).; 4.C.3(a),(b).¹¹⁷

¹¹² Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,058 – 25,072 (May 7, 2009 Hearing Transcript), with clarification of the motion and second on page 25,060, lines 7-11.

¹¹³ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,145-25,146 (Order No. 09-0057).

¹¹⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,074 (Order No. 09-0057).

¹¹⁵ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,149-25,153 (Order No. 09-0057).

¹¹⁶ Exhibit X, Regional Board’s Corrected 2009 Permit Order No. 09-0057, January 13, 2010, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf (accessed on March 24, 2021), page 631. Exhibit X, Regional Board’s Letter Issuing the Corrected 2009 Permit Order No. 09-0057, https://www.waterboards.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/ventura_ms4/Final%20Transmittal%20_Letter-Corrected_Ventura_County_MS4_Permit_Order_No.09-0057.pdf (accessed on March 24, 2021).

¹¹⁷ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,131-25,135 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 27-29, 173-175 (test claim permit).

- Reporting Program and Program Effectiveness Evaluation - Part 4.I.1¹¹⁸; Part 3.E.1(e).¹¹⁹
- Special Studies - *Part 4.E.III.3(a)(1)(D-E) (Section E.III.3 was inadvertently omitted from the issued 2009 permit, but was included in the corrected permit issued in January 2010)*¹²⁰; Attachment F, Section F¹²¹; Part 4.E.IV.4¹²²; Part 4.E.III.2(c)(3)-(4).¹²³
- Watershed Initiative Participation – Part 4.B.¹²⁴
- Vehicle and Equipment Wash Areas – Part 4.G.1.3(a).¹²⁵

¹¹⁸ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,178 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 34, 170 (test claim permit).

¹¹⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,129 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 35.

¹²⁰ Exhibit X, Regional Board’s Corrected 2009 Permit Order No. 09-0057, January 13, 2010, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf (accessed on March 24, 2021), page 631; Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 38, 190 (test claim permit).

¹²¹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,288-25,289 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 38-39, 285-286 (test claim permit).

¹²² Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,156-25,157 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 39-40, 196-197 (test claim permit).

¹²³ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,151-25,152 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 40-41, 188 (test claim permit).

¹²⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,130-25,131 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 44-45, 171-172 (test claim permit).

¹²⁵ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,170 (Order No. 09-0057). Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 48, 209 (test claim permit).

- Illicit Connection/Illicit Discharge Elimination– Part.4.H.1.3(a).¹²⁶
- U.S. EPA was involved in stakeholder meetings prior to the Order 09-0057’s adoption¹²⁷ and expressed support for the 2009 Order after its adoption.¹²⁸
- On June 8, 2009, the Building Industry Association of Southern California, Building Industry Legal Defense Foundation, and Construction Industry Coalition on Water Quality (collectively, “BIA”), petitioned the State Board to review Order No. 09-0057 based on the following allegations:¹²⁹
 - Violation of due process – the Regional Board adopted a side agreement that was not publicly noticed. The side agreement was a fundamental policy shift, and not a natural evolution of the drafting process. According to the points and authorities – “the Permanent Retention Requirement radically shifts the goal of LID from maintaining the preconstruction natural hydrology to arresting the preconstruction natural hydrology.”
 - The permit unlawfully regulates matters that are not subject to the NPDES program; namely, by requiring that all new development and redevelopment retain on site diffuse surface water without showing the nexus to the MS4.
 - The Regional Board disregarded the authority and laws governing local government.
 - The 2009 Permit is not supported by substantial evidence, but instead relied on a secret agreement.
 - The Regional Board did not consider the factors in Water Code 13241.

The petition also requested that the State Board suspend the permit, and that any application of the permit be stayed.¹³⁰

- On June 24, 2009, the State Board denied the request for a stay of Order No. 09-0057 because it was not supported by an affidavit explaining the facts supporting the request, it

¹²⁶ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,176 (Order No. 09-0057); Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 50-51, 215-216 (test claim permit).

¹²⁷ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, pages 23,595-23,596 (Agenda Item for the 2009 Permit).

¹²⁸ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, pages 602-603 (U.S. EPA letter of March 17, 2010).

¹²⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,876 (Hearing Notice for the test claim permit).

¹³⁰ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 5-14; See also the points and authorities, pages 16-36.

did not allege facts regarding substantial harm, and the facts and declaration did not explain actions or costs during the time the State Board will review the petition.¹³¹

- On July 7, 2009, BIA filed a supplemental request for a stay of the 2009 permit.¹³²
- On July 29, 2009, counsel for the claimants filed an opposition to the petition, which also shows the permittees' agreement with the provisions that were added when the Regional Board adopted the 2009 Order.¹³³ The letter states, in relevant part:

In this case, as with any negotiation to reach consensus, the Permittees, HTB and NRDC each gave up something from previously entrenched positions. The results of these discussions culminated in the Joint Comment Letter that was submitted to the Regional Water Board as part of its public review process.

[¶]. . . [¶]

In this case, the Joint Comment Letter contained agreement on four key issues relative to the MS4 Permit: Low Impact Development, Municipal Action Levels, Beach Water Quality Monitoring, and Best Management Performance Criteria. All four of these issues, and many others, were highly debated and discussed by all interested stakeholders that participated in the Regional Water Board's two-year plus process for the development of this MS4 Permit. The Petitioners actively participated in this process, which included many public workshops and stakeholder meetings. More importantly, all four issues identified in the Joint Comment Letter were part of the proposed MS4 Permit that was issued on February 24, 2009, and the version revised on April 30, 2009. Thus, the Regional Water Board's action to adopt the MS4 Permit with amendments reflective of timely submitted comments on four key, highly debated issues, was a logical outgrowth of the proposed permit noticed by the Regional Water Board.¹³⁴

- On August 3, 2009, the Regional Board filed its response to the Petition.¹³⁵

¹³¹ Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 259.

¹³² Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 267-280.

¹³³ Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 313-315.

¹³⁴ Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 314.

¹³⁵ Exhibit X, State Board's Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 489-496.

- On August 25, 2009, the State Board denied BIA’s request to stay Order No. 09-0057, with a legal analysis from the chief counsel determining that BIA did not comply with the regulatory requirement for a stay.¹³⁶
- On January 13, 2010, the Regional Board corrected Order No. 09-0057, adding back Part 4, E.III.3. and 4. (Hydromodification, and Water Quality Mitigation Criteria), which were inadvertently omitted.¹³⁷ Section G.4 of the corrected permit reiterated the effective date as 90 days from the May 7, 2009 adoption as follows: “This Order shall serve as a NPDES permit ... and shall take effect 90 days from Order adoption date (August 5, 2009) provided the U.S. EPA has no objection.”¹³⁸
- On January 28, 2010, the Regional Board issued the corrected 2009 permit, stating:

The Regional Board has corrected the Final Ventura County MS4 Permit, dated May 7, 2009, pursuant to 40 CFR 122.63(a), to correct omissions, section numbering/pagination, and minor typographical errors. Specifically, subpart 3. Hydromodification (Flow/ Volume/ Duration) Control Criteria, and subpart 4. Water Quality Mitigation Criteria contained in Part 4.E.III - New Development/ Redevelopment Performance Criteria, beginning on page 55 of the enclosed document, were adopted by the Board, but were inadvertently omitted when the Order was finalized after the Board meeting. Additionally, actual calendar dates have been inserted where previously there were references to the time period from permit adoption. The corrected final permit, as it was adopted on May 7, 2009, is transmitted herewith.

Board Order R4-2009-0057 shall be effective as of August 5, 2009, 90 days from May 7, 2009, as stated in the Order, and serves as the federal NPDES permit and State waste discharge requirements for storm water (wet weather) and non-storm water (dry weather) discharges from the MS4 within the Ventura County Watershed Protection District, County of Ventura, and the incorporated cities therein. The expiration date of this NPDES permit is May 7, 2014.¹³⁹

¹³⁶ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 497-502.

¹³⁷ Exhibit X, Regional Board’s Corrected 2009 Permit Order No. 09-0057, January 13, 2010, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf (accessed on March 24, 2021), pages 63-67.

¹³⁸ Exhibit X, Regional Board’s Corrected 2009 Permit Order No. 09-0057, January 13, 2010, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf (accessed on March 24, 2021), page 36.

¹³⁹ Exhibit X, Regional Board’s Letter Issuing the Corrected 2009 Permit Order No. 09-0057, https://www.waterboards.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf

- On February 24, 2010, the State Board suspended the deadline for additional comments on BIA’s petition for review until further notice because of the Regional Board’s January 28, 2010 issuance of the corrected permit containing significant changes.¹⁴⁰
- On March 10, 2010, the Chief Counsel of the State Board requested that the Regional Board agree to a voluntary remand of the 2009 permit and that BIA agree to place their petition in abeyance, in light of “apparent irregularities and confusion in this matter” and because the State Board would not have time to review the corrected permit and the arguments before the deadline for the Board to take action on the petition, which dismisses it by default.¹⁴¹ The March 10th letter noted the following issues: (1) corrections were made to the permit nearly eight months after the adopted permit was circulated; (2) documents were omitted from the administrative record of the permit that was sent to the State Water Board; (3) the Regional Board, in response to the petition, asked the State Board to correct a finding; and (4) [BIA] Petitioners argued that the approved permit should have been recirculated before adoption due to “alleged irregularities in the hearing.”¹⁴²
- On March 11, 2010, the Regional Board agreed to a remand in order to address the “perceived procedural issues.”¹⁴³

[ms4/Final%20Transmittal%20 Letter-Corrected Ventura County MS4 Permit, Order No.09-0057.pdf](#) (accessed on March 24, 2021).

¹⁴⁰ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 584-585.

¹⁴¹ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 593-594; Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed on October 12, 2017, page 37,876.

¹⁴² Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 593-594; Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed on October 12, 2017, page 37,876.

¹⁴³ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 597; Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 37,876-37,877 (Hearing Notice for the test claim permit, which states: “Specifically, the March 10 letter [from the State Board] noted four procedural issues: (1) corrections were made to the permit after the adopted permit was circulated; (2) a significant number of documents were inadvertently omitted from the administrative record that was transmitted to the State Water Board; (3) the Regional Board in its response to the petition asked the State Water Board to correct a finding in the permit; and (4) BIA had argued that the approved version of the permit should have been recirculated prior to adoption because of alleged irregularities at the hearing. On March 11, 2010, the Regional Board agreed to voluntary remand of Order No. 09-0057 in order to address these concerns.

Accordingly, the Regional Board proposes to reconsider adoption of Order No. 09-0057 to address the perceived procedural concerns related to incorporation of the Agreement into the adopted permit. *As such, the scope of this hearing is narrow, and the Regional Board will accept*

- On March 15, 2010, the Ventura County permittees asked the Regional Board to stay the 2009 permit, and in particular to stay Part 4, Section E (Planning and Land Development requirements, including the LID provisions) and the updated planning guidance manual (E.IV.4(b)) that was due to the Regional Board on May 6, 2010.¹⁴⁴
- By letter dated March 17, 2010, the BIA argued to the Chief Counsel of the State Board that a voluntary remand of the Order was not appropriate, but BIA would agree to withdraw its petition if the Regional Board would agree to stay the Planning and Land Development provisions in Part 4 E., and begin the permit review process again.¹⁴⁵
- On March 17, 2010, U.S. EPA filed a letter with the State Board strongly supporting Order No. 09-0057 as adopted on May 7, 2009, including Part 4.E.III., and encouraged the Regional Board to limit remand to the corrections made to (1) the Permit after it was issued on June 2, 2009, (2) the documents that may have been omitted from the administrative record, and (3) the corrected finding requested by the Regional Board.¹⁴⁶
- On March 18, 2010, NRDC and Heal the Bay filed a letter with the State Board opposing a voluntary remand and explaining that that Order adopted on May 7, 2009 was corrected in January 2010 because the Regional Board reinstated subpart 3, Hydromodification, and subpart 4, Water Quality Mitigation Criteria, both of which are contained in Part 4.E.III. By letter dated January 28, 2010, to the permittees, the Regional Board explained that those sections were inadvertently omitted when it adopted the Order and intended to replace only Section E.III.1, and not all of Section E.III.¹⁴⁷
- On March 22, 2010, NRDC, Heal the Bay, and other parties filed a letter with the Regional Board opposing the request for a stay on the ground that there is no legal basis to grant a stay, and because the permittees agreed to the provisions they are now requesting to be stayed.¹⁴⁸
- On March 25, 2010, the Regional Board’s Executive Officer issued a letter denying the permittees’ request for a stay, stating “until the Los Angeles Water Board takes further action on the Ventura County MS4 permit (which is currently scheduled for

only limited comments and evidence as described below in Section II (Scope of Hearing).”
Emphasis added.

¹⁴⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 41,193.

¹⁴⁵ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 599-600.

¹⁴⁶ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 602-603.

¹⁴⁷ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 608-612.

¹⁴⁸ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 41,195-41,198.

July 8, 2010), the existing permit, including all of its provisions, remain in full force and effect.”¹⁴⁹

- By letter dated March 30, 2010, the BIA petition was dismissed as a matter of law, effective March 29, 2010, because of the State Board’s failure to make a formal disposition on the petition.¹⁵⁰
- On May 5, 2010, the Regional Board issued a notice of hearing for July 8, 2010 to reconsider “only . . . the portions of the proposed permit that were not previously subject to a notice and comment period outside of the public hearing.”¹⁵¹ The notice states:

The Regional Board will consider whether to affirm Order No. 09-0057 that was previously adopted on May 7, 2009. Because the majority of the provisions of Order No. 09-0057 were previously subject to public comment, the Regional Board is providing an opportunity for parties and interested persons to comment and submit evidence only on the portions of the proposed permit that were not previously subject to a notice and comment period outside of the public hearing. These portions include provisions that incorporated the Agreement into the permit, as well as new or revised findings and evidence proposed by staff that supported the incorporation of the Agreement into the permit. In a few instances, additional minor modifications are also proposed by staff to be made to the permit to correct typographical errors or to provide greater clarification on non-Agreement related provisions.

[¶] . . . [¶]

Parties and interested persons are advised that, in lieu of affirming Order No. 09-0057 with staff proposed modifications, the Regional Board may adopt the draft permit originally presented to the Regional Board at the May 7, 2009 hearing. Since the entire original draft permit, including the provisions relating to Municipal Action Levels (MALs) and the planning and land development program and their associated findings, was already the subject to a full public notice and comment period, the Regional Board may choose to adopt the draft permit (or certain of its provisions). Moreover, since the entire original draft permit already received full notice and comment, the Regional Board will not accept new comments or evidence on the provisions of the original draft permit that did not change from the original staff proposal to the adopted permit, or on the provisions of the currently noticed permit that the Regional Board did not adopt (i.e., the provisions relating to MALs and the planning and land development program). The comments and evidence

¹⁴⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 41,199.

¹⁵⁰ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, page 613.

¹⁵¹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,877.

previously submitted for the May 7, 2009 hearing that were included in the Regional Board's May 7, 2009 agenda binder will be recirculated to the Regional Board members.¹⁵²

- The tentative permit issued for comment on May 5, 2010 contains strikeout and underline showing the agreement and staff-proposed modifications to the corrected permit issued in January 2010.¹⁵³ Part 4, Section E.III.1 and 2 (the agreement) are reinserted and underlined.¹⁵⁴ Also, Findings 16-29 are added to support Part 4, Section E.III.1 and 2.¹⁵⁵ There are other minor non-substantive changes, and some changes to dates.
- Between May 5, 2010 and June 7, 2010, the Regional Board received 21 written comments on the remanded tentative permit.¹⁵⁶ The Regional Board responded in writing to all comments filed.¹⁵⁷
- On June 4, 2010, U.S. EPA filed comments stating:

EPA supports the adoption of the permit as proposed in the tentative order. ... Although we were not involved in the preparation of alternative suggestions from the Permittees and these non-governmental organizations, nor did we directly receive a copy of their April 10, 2009 letter, we encountered the April 10, 2009 letter on [the Board's] website and concluded that the proposed LID provisions met our criteria as a clear, measurable, and enforceable approach.

[¶] . . . [¶]

In conclusion, *we are supportive of the Tentative Permit issued May 5, 2010, and recommend prompt adoption* of the Ventura MS4 permit without further diverting the LARWQCB [Regional Board] staff resources away from other stormwater permitting priorities.¹⁵⁸

¹⁵² Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,877-37,878.

¹⁵³ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,877 (Hearing Notice for the test claim permit).

¹⁵⁴ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 37,950-37,952 (2010 Tentative Permit).

¹⁵⁵ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 37,898-37,904 (2010 Tentative Permit).

¹⁵⁶ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,433-38,693.

¹⁵⁷ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,697-38,814.

¹⁵⁸ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,656-38,657. Emphasis added.

- At the July 8, 2010 hearing, the Regional Board staff stated:

The scope [of the public notice for the hearing] specifically excluded the other permit provisions proposed by staff and adopted by the board and therefore subject to full public notice and opportunity for comment before and at the May 2009, hearing.

The key elements included in the scope of the recent 2010 public notice were the new development and redevelopment performance criteria specifically those related to on-site retention requirements, the cap on impervious areas, and off-site irrigation requirements, and expanded year round beach water quality monitoring, and additional findings to support the new development and redevelopment performance criteria.

And in some instances, additional minor modifications are also proposed by staff to be made to the permit to correct typographical errors, or provide greater clarification on provisions that were not related to the consensus language. These are also shown in changes on the publicly noticed tentative permit.¹⁵⁹

- After the written comment period and during the Regional Board’s July 8, 2010 hearing, the Regional Board made additional changes to the tentative permit, including to section 4.E.III.2.c.2 relating to Alternative Compliance Measures, in order to “eliminate the strict 30% cap on EIA [Effective Impervious Area] and increase the off-site mitigation ratio for these sites.”¹⁶⁰ This Test Claim does *not* plead section 4.E.III.2.c.2.
- At the July 8, 2010 hearing, the Regional Board adopted the test claim permit, Order No. R4-2010-0108.¹⁶¹
- The Test Claim filed on Permit R4-2010-0108 contains the following parts (as pled by the claimant):
 - Public Information/Participation Program - Part 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), and 4.C.2(d).; 4.C.3(a),(b):

These sections are the same as the those contained in Order No. 09-0057, except that the test claim permit changed the due date from “no later than May 7, 2010

¹⁵⁹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 39,064 (July 8, 2010 Hearing Transcript).

¹⁶⁰ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,831-38,832 (Change Sheet for the Tentative Ventura County MS4 Order).

¹⁶¹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,219-39,220 (July 8, 2010 Hearing Transcript).

(one year after 09-0057 was adopted),” to “no later than (365 days after Order adoption date).”¹⁶²

- Reporting Program and Program Effectiveness Evaluation - Part 4.I.1; Part 3.E.1(e):

Part 4.I.1 is the same as that contained in Order No. 09-0057, except that the test claim permit changed the due date from “no later than May 7, 2010” to “no later than one year after the adoption of this permit (July 8, 2011).”¹⁶³

Part 3.E.1(e) is the same as that contained in Order No. 09-0057, and no changes were made.¹⁶⁴

Special Studies - Part 4.E.III.3(a)(1)(D-E); Attachment F, Section F; Part 4.E.IV.4; Part 4.E.III.2(c)(3-4):

Part 4.E.III.3(a)(1)(D-E) is the same as that contained in Order No. 09-0057, as corrected on January 13, 2010.¹⁶⁵

Attachment F, Section F, is the same as that contained in Order No. 09-0057, except that a due date for a letter regarding how permittees will comply with the hydromodification control study is changed from “no later than July 7, 2009” (09-0057) to “no later than 2 months after Order adoption date (R4-2010-0108).”¹⁶⁶

Part 4.E.IV.4 is the same as that contained in Order No. 09-0057 (requiring permittees to update the technical guidance manual on stormwater quality control measures), except that the due date to update the guidance manual is changed

¹⁶² Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 173-175 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, pages 25,131-25,135 (Order No. 09-0057).

¹⁶³ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 217 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, page 25,178 (Order No. 09-0057).

¹⁶⁴ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 170 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, page 25,129 (Order No. 09-0057).

¹⁶⁵ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 190 (test claim permit); Exhibit X, Regional Board’s Corrected 2009 Permit Order No. 09-0057, January 13, 2010, https://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ventura_ms4/Final_Ventura_County_MS4_Permit_Order_No.09-0057_01-13-2010.pdf (accessed on March 24, 2021), page 631.

¹⁶⁶ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 285-286 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,288-25,289 (Order No. 09-0057).

from “within 365 days of this order” to “shall update ... within (120 days of Order adoption date).”¹⁶⁷

Part 4.E.III.2(c)(3)-(4) is the same as that contained in Order No. 09-0057.¹⁶⁸

○ Watershed Initiative Participation – Part 4.B:

Part 4.B is the same as that contained in Order No. 09-0057.¹⁶⁹

○ Vehicle and Equipment Wash Areas – Part 4.G.1.3(a):

Part 4.G.1.3(a) is the same as that contained in Order No. 09-0057, except that the due date has changed from “May 7, 2010,” to “no later (365 days from Order adoption date).”¹⁷⁰

○ Illicit Connection/Illicit Discharge Elimination – Part 4.H.1.3(a):

Part 4.H.1.3(a) is the same as that contained in Order No. 09-0057, except that one of the due dates in A.(i) changed from “no later than May 7, 2010” to “no later than 90 days from adoption Order date (October 6, 2010).”¹⁷¹

- The test claim permit states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”¹⁷²

Thus, all of the sections in the test claim permit that were pled by the claimants and alleged to impose a reimbursable state-mandated program were originally adopted in Order No. 09-0057, effective August 5, 2009. The 2009 permit was corrected in January 2010, consistent with the Regional Board’s vote and adoption of Order No. 09-0057, and later remanded back to the Regional Board to consider some perceived due process issues, which resulted in the adoption of

¹⁶⁷ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 196-197 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,156-25,157 (Order No. 09-0057).

¹⁶⁸ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 188 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,151-25,152 (Order No. 09-0057).

¹⁶⁹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, pages 171-172 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,130-25,131 (Order No. 09-0057).

¹⁷⁰ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 209 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,170 (Order No. 09-0057).

¹⁷¹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 215-216 (test claim permit); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 25,176 (Order No. 09-0057).

¹⁷² Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (test claim permit).

the test claim permit on July 8, 2010 (R4-2010-0108). The test claim permit extended some due dates for compliance with some of the sections pled, giving the claimants more time to comply, but otherwise made no substantive change to the requirements imposed by Order No. 09-0057 that were pled by the claimants.

2. The Period of Limitation for the Permit Sections Pled by the Claimants Began to Run on August 5, 2009, the Effective Date of Order No. 09-0057, or at the Latest July 8, 2010, the Effective Date Noticed in the Test Claim Permit and by the Regional Board, so the Test Claim Filed August 26, 2011, Was Not Timely Filed Within 12-Months Following the Effective Date of the Executive Order as Required by Government Code Section 17551(c). The Claimant's Reliance on the MOA Is Misplaced.

The courts treat deadlines to file claims before administrative agencies the same as statutes of limitation.¹⁷³ The California Supreme Court explained that the statute of limitation accrues, or begins to run, when the cause of action is complete with all of its elements:

Statutes of limitation do not begin to run until a cause of action accrues. (*Romano v. Rockwell International, Inc.* (1996) 14 Cal.4th 479, 487 [59 Cal.Rptr.2d 20, 926 P.2d 1114].) [¶] Generally speaking, a cause of action accrues at “the time when the cause of action is complete with all of its elements.” [Citations.]¹⁷⁴

For the purposes of filing a test claim, the period of limitation in Government Code section 17551(c) begins to run following the effective date of the statute or executive order pled, and the claimant has 12 months from that date to file a test claim.¹⁷⁵ That deadline can be extended if the claimant asserts that costs were first incurred after the effective date of the statute or executive order pled in the claim, but the claimants are not asserting an extension on that basis.

Rather, the claimants request that the Commission ignore the effective date of the test claim permit noticed by the Regional Board (July 8, 2010), to find that the Test Claim was timely filed because the effective date of the test claim permit was delayed 50 days pursuant to the MOA between the State and U.S. EPA. The claimants argue that the MOA delay provision applies due to the “significant” number of comments received by the Regional Board, and because the permit adopted on July 8, 2010 was revised from the tentative permit issued on May 5, 2010, and the revision was not to accommodate U.S. EPA comments.¹⁷⁶ The claimants also argue that the

¹⁷³ *Bi-Rite Meat & Provisions Co. v. City of Hawaiian Gardens Redevelopment Agency* (2007) 156 Cal.App.4th 1419, 1429-1434; *International Union of Operating Engineers, Local No. 12 v. Fair Employment Practices Commission* (1969) 276 Cal.App.2d 504, 510.

¹⁷⁴ *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 911.

¹⁷⁵ Government Code section 17551(c); see also, *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 179. [“The Legislature consistently limited reimbursement of costs by reference to the effective dates of statutes and executive orders and nothing indicates the state intended recovery of costs to be open-ended.”]

¹⁷⁶ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17. Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

MOA is an extension of U.S. EPA’s authority under the Clean Water Act and so the provisions of the permit cannot “modify or supersede the provisions in the MOA.”¹⁷⁷

As explained below, the claimants’ reliance on the MOA is misplaced. The Commission finds that the period of limitation for the sections of the test claim permit pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057, or at the latest July 8, 2010, the effective date of the test claim permit. Thus, the Test Claim filed on August 26, 2011, was not timely filed within 12 months following the effective date of the executive order as required by Government Code section 17551(c).

- a. The period of limitation for the permit sections pled by the claimants began to run on August 5, 2009, the effective date noticed by the Regional Board in Order No. 09-0057, or at the latest July 8, 2010, the effective date noticed in the test claim permit.

Government decisions that are “adjudicative” in nature are subject to procedural due process principles, including requirements for notice of administrative decisions.¹⁷⁸ The NPDES permitting process is quasi-judicial:¹⁷⁹

Permit issuance is a quasi-judicial, not a quasi-legislative, rule-making proceeding: “The exercise of discretion to grant or deny a license, permit or other type of application is a quasi-judicial function.” [Citations omitted.]

Instead, the Regional Board correctly followed the administrative adjudication procedures (Gov.Code, § 11445.10 et seq.) and the companion regulations at California Code of Regulations, Title 23, sections 647–648.8 or informal adjudicative public hearings.¹⁸⁰

Notice is expressly required by Water Code section 13263(f), which states:

The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

Thus, the Regional Board is required to provide notice of the permit requirements and when those requirements become effective.

As stated above, the prior order, Order No. 09-0057, included all the provisions pled in the Test Claim and continued to be effective until the adoption of the test claim permit. Both the State and Regional Boards rejected requests to stay Order No. 09-0057.¹⁸¹ And as noted in the

¹⁷⁷ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

¹⁷⁸ *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612-613.

¹⁷⁹ *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263.

¹⁸⁰ *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1385.

¹⁸¹ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, filed August 23, 2017, pages 497-502 (State Board Letter of August 25, 2009). Exhibit X, Excerpt of

March 25, 2010 letter from the Regional Board’s Executive Officer denying the permittees’ request for a stay: “until the Los Angeles Water Board takes further action on the Ventura County MS4 permit (which is currently scheduled for July 8, 2010), the existing permit, including all of its provisions, *remains in full force and effect.*”¹⁸²

As an order issued by a state agency, Order No. 09-0057 is an executive order within the meaning of Government Code section 17516 and article XIII B, section 6 of the California Constitution.¹⁸³ In order to seek reimbursement for the provisions required by Order No. 09-0057, the claimants had to file the test claim within 12 months of its effective date, which as stated in that permit was 90 days after the May 7, 2009 adoption date, or August 5, 2009.¹⁸⁴

Even the permit provision on Special Studies (Part 4.E.III.3(a)(1)(D-E)), which was inadvertently left out of Order No. 09-0057 as originally issued, was effective no later than the corrected 2009 permit that was issued on January 28, 2010.¹⁸⁵

The claimants argue that filing a test claim on Order No. 09-0057, while the permit was actively being reconsidered by the Regional Board, would have been premature because the specific mandates in the permit reasonably could have changed upon reconsideration.¹⁸⁶ This ignores the limited nature of the reconsideration and assumes that action will be taken on reconsideration to change the permit when that may not have been the case. The May 5, 2010 Regional Board notice for July 8, 2010 hearing was to reconsider “only . . . the portions of the proposed [2009] permit that were not previously subject to a notice and comment period outside of the public hearing.”¹⁸⁷ Those were the provisions of the agreement that became Part 4.E.III.1. and 2. of the 2009 Permit,¹⁸⁸ but those provisions were *not* pled in the Test Claim.

the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 41,199 (Regional Board letter of March 25, 2010).

¹⁸² Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 41,199 (Regional Board letter of March 25, 2010). Emphasis added.

¹⁸³ *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 919-920 (finding that Government Code section 17516 was unconstitutional to the extent it purports to exempt orders issued by Regional Water Boards from the definition of “executive orders.”).

¹⁸⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,145-25,146 (Order No. 09-0057, Finding G4).

¹⁸⁵ Exhibit X, Regional Board’s Letter Issuing the Corrected 2009 Permit Order No. 09-0057, https://www.waterboards.ca.gov/rwqcb4/water_issues/programs/stormwater/municipal/ventura_ms4/Final%20Transmittal%20Letter-Corrected_Ventura_County_MS4_Permit_Order_No.09-0057.pdf (accessed on March 24, 2021).

¹⁸⁶ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

¹⁸⁷ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 37,877.

¹⁸⁸ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 25,145-25,146 (Order No. 09-0057).

The test claim permit did extend the due dates for some of the provisions in Order No. 09-0057, such as the Public Information/Participation Program, Part 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), and 4.C.2(d).; 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation, Part 4.I.1; Special Studies, Attachment F, Section F, and Part 4.E.IV.4; Vehicle and Equipment Wash Areas, Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination, Part 4.H.1.3(a). Otherwise the requirements first imposed by Order No. 09-0057 remained the same. Thus, even if the later adopted test claim permit was what made the “cause of action . . . complete with all of its elements,” then the period of limitation would have accrued and began to run on July 8, 2010, which was the date noticed by the Regional Board as the effective date of the test claim permit. As it states in Finding G4, “This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect on (Order adoption date) provided the Regional Administrator of the U.S. EPA has no objections.”¹⁸⁹ The record indicates that U.S. EPA expressed support for Order No. 09-0057 and the test claim permit both in writing¹⁹⁰ and in testimony at the July 8, 2010 hearing.¹⁹¹ Furthermore, the Regional Board’s website currently states that the test claim permit became effective on July 8, 2010 (“Effective Date: 2010-07-08”).¹⁹²

None of the claimants’ public documents indicate that the test claim permit became effective later than July 8, 2010. According to the Ventura County Stormwater Quality Management Program website: “The current Ventura Countywide Stormwater Permit Order No. R4-2010-0108 was adopted in 2010 for a five-year term. The Permit expired on July 8, 2015 [five years from the effective date of July 8, 2010], but is on administrative extension until a new Permit is adopted.”¹⁹³ The cover letter for their 2009-2010 annual report indicates that the 2010 Permit was adopted on July 8, 2010, and mentions no delayed effective date.¹⁹⁴ In addition, a staff recommendation dated October 7, 2014, to the Ventura County Watershed Protection District to approve a consultant services contract for storm drain mapping to comply with the requirements

¹⁸⁹ Exhibit A, Test Claim, filed August 26, 2011 and revised May 17, 2017, page 162 (claim permit).

¹⁹⁰ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, pages 602-603 (U.S. EPA letter of March 17, 2010); Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, pages 38,656-38,657 (U.S. EPA letter of June 4, 2010).

¹⁹¹ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,163-39,166.

¹⁹² Exhibit X, Regional Board, Region 4, Adopted Orders, https://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/query.php?id=5894 (accessed April 5, 2021).

¹⁹³ Exhibit X, Ventura County Stormwater Quality Management Program, Our MS4 Permit, <https://vcstormwater.org/index.php/regulations/our-ms4-permit> (accessed March 26, 2021).

¹⁹⁴ Exhibit X, Ventura County Stormwater Quality Management Program, Transmittal letter for the 2009-2010 Annual Report, December 15, 2010, https://vcstormwater.org/images/stories/NPDES_Documents/2009-10_Report/TransmittalLetter_2010_VenturaCountywideAnnualReport.pdf (accessed March 26, 2021).

of Order No. R4-2010-0108, indicates that the test claim permit was adopted on July 8, 2010, and mentions no delayed effective date.¹⁹⁵

Thus, there is no evidence in the record or in documents publicly available of any notices issued by the Regional Board indicating that the permit had a delayed effective date as asserted by the claimants. All documents issued by the Regional Board provide notice that the effective date of the permit was July 8, 2010.

In sum, the period of limitation for the sections pled by the claimants began to run on August 5, 2009, the effective date of Order No. 09-0057, or at the latest July 8, 2010, the effective date of the test claim permit. Thus, the Test Claim filed on August 26, 2011, was not timely filed within 12 months following the effective date of the executive order as required by Government Code section 17551(c).

b. The claimants' reliance on the MOA is misplaced. The 50-day delay of implementation in the MOA between the State Board and U.S. EPA does not apply to the test claim permit.

The claimants argue that the Test Claim was timely filed because the effective date of the test claim permit was delayed 50 days pursuant to the MOA between the State and U.S. EPA due to the “significant” number of comments received by the Regional Board, and because the permit adopted on July 8, 2010 was revised from the draft permit issued on May 5, 2010, and the revision was not to accommodate U.S. EPA comments.¹⁹⁶ The claimants also argue that the MOA is an extension of U.S. EPA’s authority under the Clean Water Act and so the provisions of the permit cannot “modify or supersede the provisions in the MOA.”¹⁹⁷

The claimants’ reliance on the MOA is misplaced.

The terms of the MOA between the State and U.S. EPA have to be understood in light of the Clean Water Act and the roles that the state and federal government play in the NPDES permitting process.

Under the federal Clean Water Act, U.S. EPA is authorized to issue NPDES permits for any pollutant discharges that will satisfy the requirements of the Clean Water Act or the U.S. EPA Administrator.¹⁹⁸ States may administer their own permitting system if authorized by U.S. EPA.¹⁹⁹ If U.S. EPA concludes that a state has adequate authority to administer a NPDES program, it must grant approval and suspend its own issuance of permits.²⁰⁰ However, U.S. EPA retains some supervisory authority over the States’ programs. States must inform U.S. EPA of all permit applications received and of any action related to the consideration of a submitted

¹⁹⁵ Exhibit X, Ventura County Watershed Protection District Staff Recommendation.

¹⁹⁶ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, pages 3-4.

¹⁹⁷ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 2.

¹⁹⁸ 33 United States Code section 1342(a)(1), (a)(2).

¹⁹⁹ 33 United States Code section 1342(b).

²⁰⁰ 33 United States Code section 1342(b), (c).

application, and EPA can withdraw approval of a State's program if a State fails to comply with the Clean Water Act.²⁰¹

In order to obtain the authority to administer the NPDES program, the State is required to enter into an MOA with U.S. EPA (in this case, the regional administrator of U.S. EPA Region IX).²⁰² An MOA is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the State's regulatory program and U.S. EPA's program oversight. According to the Federal Regulation:

Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section [regarding the transfer of pending permit applications from U.S. EPA to the State], the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.²⁰³

The MOA that governs adoption of NPDES permits in California became effective in September 1989.²⁰⁴ Its purpose is to “redefine the working relationship between the State and EPA pursuant to the Federal regulatory amendments that have been promulgated since 1973. . . . The basic requirements of this MOA shall override any other State/EPA agreements as required by 40 CFR 123.24(c).”²⁰⁵ The MOA includes the following provisions:

1. Authorizes U.S. EPA to comment upon or object to the issuance of a permit or the terms or conditions therein. Neither the State Board nor the Regional Boards shall adopt or issue a NPDES permit until all objections made by EPA have been resolved pursuant to 40 CFR 123.44 and this MOA, and that permit review will be coordinated “through frequent telephone contact designed to not cause significant delays.” The MOA states the following:

The State Board and Regional Boards have primary authority for the issuance of NPDES permits. EPA may comment upon or object to the issuance of a permit or the terms or conditions therein. Neither the State Board nor the Regional Boards shall adopt or issue a NPDES permit until all objections made by EPA have been resolved pursuant to 40 CFR

²⁰¹ 33 United States Code section 1342(c)(3), (d); *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 756 and fn. 4.

²⁰² 40 Code of Federal Regulations section 123.24.

²⁰³ 40 Code of Federal Regulations section 123.24(a).

²⁰⁴ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-120 (Memorandum of Agreement).

²⁰⁵ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-73 (Memorandum of Agreement).

123.44 and this MOA. The following procedures describe EPA permit review, comment, and objection options that may delay the permit process. These options present the longest periods allowed by 40 CFR 123.44. However, the process should normally require far less time.

The State Board, Regional Boards, and EPA agree to coordinate permit review through frequent telephone contact. Most differences over permit content should be resolved through telephone liaison. Therefore, permit review by the State and EPA should not delay issuing NPDES permits. However, if this review process causes significant delays, the Chief, Division of Water Quality (DWQ) of the State Board (or his or her designee), and the Director, Water Management Division (WMD) of EPA (or his or her designee) agree to review the circumstances of the delays. The State Board and EPA shall determine the reasons for the delays and take corrective action.²⁰⁶

2. Provides that Final permits (except general permits) become effective upon adoption when:
 - EPA has made no objections to the permit;
 - There has been no significant public comment;
 - There have been no changes made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments); and
 - The State Board or Regional Board does not specify a different effective date at the time of adoption.²⁰⁷
3. Provides that Final permits (except general permits) become effective 50 after days after adoption when:
 - There has been significant public comment; or
 - Changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments).²⁰⁸

The claimants rely on the last provision, arguing that the 21 comments received before the test claim permit was adopted were significant, and that changes were made to the latest version of the draft permit that were not to accommodate U.S. EPA requests. The claimants assert that

²⁰⁶ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 78 (Memorandum of Agreement, paragraph II.A.).

²⁰⁷ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 93 (Memorandum of Agreement, paragraph F.1.).

²⁰⁸ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 93 (Memorandum of Agreement, paragraph F.2.).

either of these reasons required a delay in the effective date of the permit.²⁰⁹ The claimants also state that the delay provisions in the MOA are intended to provide U.S. EPA time to review permit changes.²¹⁰

The record in this case shows that U.S. EPA was notified of all 21 comments and made no objection to the tentative permit.²¹¹ In fact, it fully supported the terms of the tentative permit, as stated in its June 4, 2010 comments.²¹² At the July 8, 2010 hearing, a representative from U.S. EPA expressed support for the terms of the tentative permit.²¹³ And although the tentative

²⁰⁹ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, page 17; Exhibit E, Claimants' Rebuttal Comments, filed January 2, 2018, pages 3-4.

²¹⁰ Exhibit E, Claimants' Rebuttal Comments, filed January 2, 2018, page 3.

²¹¹ On June 28, 2010, the parties and interested persons to the permit, including U.S. EPA, were provided notice of the availability to a link to open all comments and responses to comments for the 2010 permit. (Exhibit X, Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 38,953, with U.S. EPA listed on the service list on page 38,955, service to sofranko.anna@epa.gov.) On July 7, 2010, the parties and interested persons, including U.S. EPA, were provided notice of the availability to a link to open the revised administrative record index for the proposed permit. (Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 38,966, with U.S. EPA listed on the service list on page 38,968, service to sofranko.anna@epa.gov.) The notice and agenda for the July 8, 2010 was served, and U.S. EPA received service. (Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 38,969, with U.S. EPA listed on the service list on page 38,978, service to fleming.terrence@epa.gov and hashimoto.janet@epa.gov, page 38,983 service to stuber.robbyn@epa.gov.)

²¹² Exhibit X, Excerpt of the Regional Boards' Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,656-38,657.

²¹³ Exhibit X, Excerpt of the Regional Board's Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,163-39,166 (July 8, 2010 Hearing Transcript). John Kemmerer of U.S. EPA testified in support of the Permit, stating in relevant part:

As you know, we've all seen that this category of discharges represents the primary cause of water quality (inaudible) in coastal waters in California. Last May, I expressed E.P.A. support for the low impact development provisions that were ultimately adopted by this permit. Those adopted provisions included what we saw as unambiguous performance criteria providing the valuable framework for controlling stormwater discharges for new development and redevelopment.

And one of the issues that we've had over the years here in looking at stormwater permits across our region is trying to ensure that we have clear, measurable and enforceable performance requirements in the permits. I think what you adopted last May and what's in front of you tonight provide those sort of clear requirements. Today we're supportive of the permit your staff had proposed for adoption, and we agree with the presentation your staff made of the benefits of on-site retention. We recommend you adopt the permit as proposed and look forward to working with your staff on other storm work like the L.A., the county

permit was modified during the hearing as described in the change sheet, U.S. EPA did not object to the modifications.^{214,215}

The claimants state that the purpose of the 50-day delay in the MOA is to “provide U.S. EPA with adequate time to review a permit that has garnered significant public attention and/or has changed during the approval process.”²¹⁶ Since U.S. EPA at all times expressed agreement with both the 2009 Permit,²¹⁷ and the test claim Permit,²¹⁸ the purpose of EPA scrutiny was not furthered by the 50-day delay provision in the MOA.

More importantly, the MOA governs “the working relationship between the State and EPA.”²¹⁹ It is a contract between those parties.²²⁰ The MOA does *not* provide notice to the permittees of the effective date of an NPDES permit, which is required by the Regional Board when it adopts a quasi-judicial order.²²¹ As discussed above, all notices issued by the Regional Board indicate that the test claim permit became effective on July 8, 2010.²²² There is no evidence in the record or in documents publicly available that the permit had a delayed effective date.

permit and the Long Beach permit. (Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,163-39,164.)

²¹⁴ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 38,831-38,832 (Change Sheet for the Tentative Ventura County MS4 Order).

²¹⁵ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 39,208-39,209 (July 8, 2010 Hearing Transcript).

²¹⁶ Exhibit E, Claimants’ Rebuttal Comments, filed January 2, 2018, page 3.

²¹⁷ Exhibit X, State Board’s Administrative Record for the Petition on the 2009 Permit, pages 602-603 (U.S. EPA letter of March 17, 2010). See also Exhibit X Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, pages 23,595-23,596 (2009 Permit Agenda Item), where U.S. EPA is described as a stakeholder involved in Order 09-0057.

²¹⁸ Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, pages 39,163-39,166, 39,208-39,209 (July 8, 2010 Hearing Transcript).

²¹⁹ Exhibit A, Test Claim filed August 26, 2011 and revised May 17, 2017, pages 72-73 (Memorandum of Agreement).

²²⁰ *Tyler v. Cuomo* (9th Cir. 2000) 236 F.3d 1124, 1134, analyzing an MOA between U.S. Department of Housing and Urban Development and the City of San Francisco, finding that the MOA is a contract and the City is bound by its terms.

²²¹ Water Code section 13263(f); *Marathon Oil Co. v. EPA* (1977) 564 F.2d 1253, 1260-1263; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1385.

²²² Exhibit X, Excerpt of the Regional Board’s Administrative Record for the 2009 and 2010 Permits, filed October 12, 2017, page 39,262 (test claim permit, Finding G4). Exhibit X, Regional Board, Region 4, Adopted Orders,

Accordingly, the claimants' reliance on the MOA is misplaced.

V. Conclusion

Based on the foregoing analysis, the Commission dismisses this Test Claim because it was not timely filed within 12 months of the effective date of the executive order pled pursuant to Government Code section 17551(c).

https://www.waterboards.ca.gov/losangeles/board_decisions/adopted_orders/query.php?id=5894
(accessed April 5, 2021).

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 May 19, 2021, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 19, 2021**

*California Regional Water Quality Control Board, Los Angeles Region,
Order No. R4-2010-0108, 11-TC-01*

California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, NPDES Permit No. CAS00-4002, Adopted July 8, 2010; Public Information and Participation Program: Parts 4.C.2(c)(1)(C), 4.C.2(c)(2),(6),(8), 4.C.2(d), 4.C.3(a),(b); Reporting Program and Program Effectiveness Evaluation: 4.I.1; 3.E.1(e); Special Studies: 4.E.III.3(a)(1)(D-E); Attachment F, Section F, Part 4.E.IV.4; Part 4.E.III.2(c)(3)-(4); Watershed Initiative Participation: Part 4.B; Vehicle and Equipment Wash Areas: Part 4.G.1.3(a); and Illicit Connection/Illicit Discharge Elimination: Part 4.H.1.3(a).

County of Ventura and Ventura County Watershed Protection District, 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 May 19, 2021 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/17/21

Claim Number: 11-TC-01

Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

Claimants: County of Ventura
Ventura County Watershed Protection District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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